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Highlights

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Highlights

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Presidential Documents

Title 3—

The President

Presidential Determination No. 80-21 of July 1, 1980

Determination To Authorize the Furnishing of Immediate Military Assistance to Thailand

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 506(a) of the Foreign Assistance Act of 1961, as amended (the Act), I hereby determine that:

1) an unforeseen emergency exists which requires immediate military assistance to Thailand; and

2) the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $1,100,000 in defense services by the Department of Defense to Thailand for the purposes of chapter 2 of part II of the Act.

You are requested, on my behalf, to report this determination to the Congress as required by law, and none of the defense services provided for herein shall be furnished to Thailand until after such report has been made.

This determination shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
Washington, July 1, 1980.

[FR Doc. 80-20894
Filed 7-9-80; 2:45 pm]
Billing code 3195-01-M

Rules and Regulations

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 302 and 305

Recommendations and Waiver of Bylaws of the Administrative Conference

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations; Waiver of Bylaws.

SUMMARY: The Administrative Conference of the United States, at its Twenty-first Plenary Session, adopted four recommendations concerning Magnuson-Moss rulemaking, procedures for enforcing petroleum price regulations, coordination and implementation of the Federal Advisory Committee Act, and disqualification of decisional officials from participating in agency rulemaking. Recommendations of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of Recommendations, together with the texts of those Recommendations deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR 304.2(a)).

The Administrative Conference also waived temporarily a provision of its bylaws limiting the number of public members who may be reappointed beyond their third consecutive term.

DATES: These recommendations and other resolutions were adopted June 5–6, 1980 and issued July 7, 1980.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Executive Secretary, (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvement to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Administrative Conference of the United States at its Twenty-first Plenary Session, held June 5–6, 1980, adopted four recommendations.

Recommendation 80–1 completes the Conference's study of Federal Trade Commission rulemaking, undertaken pursuant to section 202(d) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act of 1975. (For earlier recommendations deriving from this study, see Recommendation 79–1, 44 F.R. 38817, and Recommendation 79–5, 45 F.R. 2307.) It urges that the Federal Trade Commission structure its rulemaking proceedings so as to narrow and to focus the issues early in the proceeding. It also urges that in taking final action on the rule, the FTC Commissioners systematically consider and determine the agency response to all significant information and argument received. The recommendation also contains advice to Congress concerning procedural requirements for agency rulemaking in future legislation. Finally, the recommendation urges retention of the existing expense-reimbursement program under the Magnuson-Moss Act, if the other procedures of the Act remain in effect, and it includes several proposals for the administration of that program.

Recommendation 80–2 deals with procedures for enforcing petroleum price regulations. It calls for abolition of the existing review by the Federal Energy Regulatory Commission of remedial orders proposed by the Department of Energy and for improved adjudicative procedures, including the use of administrative law judges, within the Department. It also urges direct judicial review of such orders in the appellate courts, as opposed to the United States district courts.

Recommendation 80–3 calls for improved Executive Branch coordination and implementation of the Federal Advisory Committee Act and expresses the views of the Conference with respect to the applicability of the Act to *ad hoc* advisory groups and privately established groups.

Recommendation 80–4 is addressed to the standards and procedures agencies should employ in determining whether decisional officials should be disqualified or recuse themselves from participating in agency rulemaking.

The Conference also voted to waive for the period July, 1980–June, 1982 a provision of its bylaws limiting the number of public members who may be reappointed beyond their third consecutive term.

Finally, the Conference received reports from its Special Committee on the Role of the Administrative Conference on the research and implementation programs of the Conference and passed resolutions endorsing the Committee's conclusions. The texts of these resolutions will not be published in the Federal Register.

Therefore, Title 1, Chapter III of the Code of Federal Regulations is amended as follows:

PART 302—BYLAWS OF THE ADMINISTRATIVE CONFERENCE

§ 302.2 [Amended]

1. Section 302.2(b) is amended by adding the following footnote (*) at the end of the paragraph:

*The operation of the second sentence of paragraph (b) is suspended for the period July 1, 1980 through June 30, 1982.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2. The table of contents to Part 305 is amended to add the following sections:

Sec.
305.80–1 Trade Regulation Rulemaking Under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Recommendation No. 80–1).
305.80–2 Enforcement of Petroleum Price Regulations (Recommendation No. 80–2).
305.80–3 Interpretation and Implementation of the Federal Advisory Committee Act (Recommendation No. 80–3).
305.80–4 Decisional Officials' Participation In Rulemaking Proceedings (Recommendation No. 80–4).

3. Section 305.80–1 is added to Part 305 to read as follows:

§ 305.80-1 Trade regulation rulemaking under the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Recommendation No. 80-1).

The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act of 1975, Pub. L. 93-637, established special procedures for the adoption of treade regulation rules by the Federal Trade Commission. The Act also created a program for the reimbursement of the expenses of participants in trade regulation rulemaking who qualify for funding under criteria set forth in that statute.

Recommendations 79-1 and 79-5, adopted by the Administrative Conference in June and December of 1979, respectively, dealt with the Federal Trade Commission's implementation of the statute through the hearing stage of the rulemaking proceeding, and with the Commission's administration of the expense-reimbursement program. This recommendation supplements the two previous recommendations and completes the Administrative Conference's report to the Congress required by Section 202(d) of the Magnuson-Moss Act (as amended by Pub. L. 95-558).

This recommendation, and the reports on which it is based, address the following topics: (1) the procedures used by the Federal Trade Commission in the posthearing stage of Magnuson-Moss rulemaking; (2) the value of Magnuson-Moss Act procedures generally, and (3) the effects of the expense-reimbursement program.—

A. Post-hearing Procedures in Trade Regulation Rulemaking By the Federal Trade Commission

The post-hearing stage of Magnuson-Moss rulemaking is complex and involves the following steps: preparation of the Presiding Officer's report; preparation of the rulemaking staff's report, with recommendations for a rule; opportunity for public comment on those reports; Bureau of Consumer Protection review, including the revision of staff's recommendations for a rule and the preparation of a summary of the "post-record" comments; oral presentations to the Commission by rulemaking participants; consideration of a final rule by the Commission; preparation of the statement of basis and purpose to accompany the final rule, and, finally, publication of the final rule and statement of basis and purpose in the Federal Register.

Under even the best of circumstances, this would be a lengthy process. However, in most proceedings studied, the FTC and interested persons had to contend, in addition, with massive, poorly-organized records generated during earlier, unfocused prehearing and hearing stages. *See* the preamble to Recommendation 79-1 for a description of the conduct of those stages. Consequently, the post-hearing stage of Magnuson-Moss rulemaking has been protracted. In the eight proceedings to reach the Commission for final action by April of 1980, the average time from the end of the oral hearing to the first Commission meeting to consider the rule was more than 27 months. In the three proceedings ending with promulgation of a final rule, the average time from the first Commission meeting to consider the rule to publication in the Federal Register was an additional 8.5 months.

The massive, poorly-organized records in most of the early Magnuson-Moss rulemakings are symptomatic of a basic problem observed in the FTC's trade regulation rulemaking proceedings: that is, the failure of the FTC to recognize that effective implementation of the Magnuson-Moss Act requires even more emphasis on procedural and substantive structuring than agencies have traditionally used for informal rulemaking under 5 U.S.C. 553. Instead, the appropriate substantive structuring—the focusing and narrowing of the issues—often did not take place until late in the post-hearing stage of the proceedings, and, in many instances, not until the very end of the administrative process. The FTC Commissioners' general lack of involvement in the process until the very end, and the absence of any "feedback" from them to staff and interested persons during most of the process, further contributed to the problem of lack of structure. As a result, public input—by means of rebuttal, "post-record" comments and oral presentations—was not focused narrowly on issues or information of significance to the Commissioners.

In addition to greater intermediate structuring or narrowing of the issues by the Commissioners, there should also be more emphasis on structure at the end of the proceeding because the issues in most trade regulation rulemaking proceedings are likely to remain highly complex, and the records will probably continue to be large. Specifically, the Commissioners should have procedures which assure that they systematically consider and respond to all significant comments submitted by interested persons during a rulemaking proceeding. It should be recognized that the Commissioners will necessarily have to consult with the rulemaking staff, as well as other staff (*e.g.*, economists in the Bureau of Economics), in analyzing and evaluating the record of a proceeding.

B. General Recommendations With Respect to the Procedures Required by the Magnuson-Moss Act

The Administrative Conference's study of the implementation of the Magnuson-Moss Act by the Federal Trade Commission provides compelling evidence that a statutory requirement for the mandatory use of the procedures contained in that act is not an effective means of controlling an agency's discretion in its exercise of a broad delegation of legislative power which has not acquired, in law, specific meaning. The Magnuson-Moss Act procedures can only be effective when the substantive decision-making process is structured, as in adjudication, by fairly detailed legal or technical standards which establish the boundaries on the inquiry and inform the participants what kinds of information are relevant and probative. This type of structure was lacking in trade regulation rulemaking by the FTC, and consequently, the combination of additional procedural requirements with informal notice—and comment procedures caused delay and uncertainty in the rulemaking proceedings, and appears to have contributed to judicial reversal of final rulemaking actions. Although the Conference concludes that procedures in addition to section 553 procedures should not, as a general matter, be statutorily required, agencies may decide to use such procedures—or other procedures—in the light of the circumstances of particular proceedings. Such action by agencies would be consistent with past Conference recommendations. *See* ACUS Recommendations 72-5 and 76-3.

The Conference's study of Magnuson-Moss rulemaking also shows that imposition of novel procedural requirements, such as those in the Magnuson-Moss Act, is likely to have high transition costs if applied to pending proceedings. Even if applied only to new proceedings, however, sufficient lead time is required for the agency to develop the procedures and internal structure needed to implement the new procedures. Thus, for example, reasonable time must be provided for an agency to adopt specific rules of practice and procedure to govern the conduct of the proceedings; to develop the staff and structure needed to index, organize, and make available a useful rulemaking record; to make available and train presiding officers to conduct the proceedings, and to inform and

instruct its staff with respect to the new procedural requirements.

C. Evaluation of the Magnuson-Moss Act's Expense-Reimbursement Program

In Recommendation 79–5, the Conference concluded that the expense-reimbursement program was being implemented faithfully and efficiently in accordance with the statute, and adopted a number of recommendations concerning the administration of the program. The Conference reserved action on larger questions relating to the value of the program.

Although the overall value of reimbursement participation is impossible to quantify, reimbursed participants in the Commission's proceedings have provided a variety of viewpoints and information on relevant issues that would not otherwise have been presented. Through briefs and oral argument, they helped to focus the Commission's attention on matters which had not been highlighted by other participants. In addition, they developed empirical data which was useful to the Commission; effectively cross-examined witnesses presented by other parties and by staff, and presented expert testimony. These contributions to the Commission's proceedings attest to the value of the program.

The proceedings under the Magnuson-Moss Act have frequently raised complex technical and legal issues which required expert legal representation and a capacity to deal with sophisticated scientific and analytic concepts. In this circumstance, the fact that a relatively small number of participants received substantial compensation in several proceedings does not demonstrate a defect in the design or implementation of the program.

Although reimbursed participants often agree with staff to the extent of believing that a rule should issue, many significant differences between the positions of the reimbursed participants and the Commission staff emerged. General agreement as to the need for a rule did not prevent participants from presenting vigorously critical analyses of staff positions in proceedings or from presenting independent data and viewpoints which enriched the record. Moreover, staff positions were altered during the course of several proceedings, so that agreement between staff and reimbursed participants at the outset disappeared during the proceeding.

A. Recommendations With Respect to the Administration of the Magnuson-Moss Act by the Federal Trade Commission

In trade regulation rulemaking under the Magnuson-Moss Act:

1. It is essential that the Federal Trade Commission structure the rulemaking proceedings to narrow and focus the issues early in the proceeding and prior to the holding of the hearing required by section 18(c) of the Federal Trade Commission Act. It is highly desirable that the Commissioners themselves participate in and approve the narrowing and focusing of the issues to be explored at that hearing.

2. In taking final action, the Commissioners of the Federal Trade Commission should systematically consider and determine the agency response to all significant information and argument presented by interested persons during the rulemaking. Such presentations and the agency's response to them should be summarized in the statement of basis and purpose accompanying a final rule. The Commissioners should have the assistance of the Bureau of Consumer Protection's rulemaking staff, as well as other Commission staff, during their analysis and evaluation of the record in the proceeding.

B. General Recommendations With Respect to the Procedures Required by the Magnuson-Moss Act

1. The procedures in the Magnuson-Moss Act have not proved to be effective in controlling the agency's discretion in its exercise of a broad delegation of legislative power, and it is recommended that Congress not rely on such procedures for such a purpose.

2. Moreover, because of the inherent difficulty of managing a proceeding and developing a coherent record where portions of the proceedings are to be conducted pursuant to the Section 553 model, and other portions according to additional procedures mandated by statute, often without a clear line of demarcation between the two portions, there is a high likelihood of delay and uncertainty and an increased risk of judicial reversal on procedural grounds. For this reason, Congress should not ordinarily require, for agency rulemaking, procedures in addition to those specified by § 553 of the Administrative Procedure Act, although the agencies should have the discretion to utilize them.

3. Statutes which impose novel procedural requirements, like those contained in the Magnuson-Moss Act, on particular agency functions involve high transition costs if they are applied to pending agency proceedings. Consequently, the statutes should, by means of delayed effective dates or otherwise, provide significant lead time to enable the agency to develop the necessary procedural and administration practices and structures before commencing proceedings under the new procedural requirements.

C. Recommendations With Respect to the Magnuson-Moss Acts Expense-Reimbursement Program

1. If the Magnuson-Moss Act's procedures remain in effect, the participant reimbursement program under the Magnuson-Moss Act should be continued without substantial modification.

2. If a group appears to have the capacity to make a significant contribution to a proceeding and it meets the statutory criteria, it should be eligible for reimbursement. No limit should be placed on the number of proceedings for which a group can be reimbursed, and no arbitrary ceiling on the amount of reimbursement to any group in a particular proceeding or year should be imposed.

3. Mandatory cost-sharing requirements should not be imposed, since they might prevent presentation of valuable viewpoints and evidence. Fee schedules and overhead allocation formulas should be periodically reviewed to assure that participants are adequately reimbursed for expenses incurred.

4. Public participant reimbursement programs should not preclude reimbursement of participants who support or favor the position of the agency staff. In deciding how reimbursement funds should be disbursed among agencies and proceedings, decision-makers should take into account the fact that reimbursement programs are likely to be most valuable in agencies or proceedings where there is a substantial difference between the positions of the agency staff and groups seeking reimbursement. They should also consider the amount likely to be spent by other participants who are not relying on the reimbursement program.

Separate Statement of Kenneth Culp Davis

The main idea in Recommendation 80–1 is that Magnuson-Moss rulemaking procedures do not effectively limit the Commission's discretionary power. I fully agree.

But that idea is negative, and because it is negative it seems to me inadequate. Congress has directed the Administrative Conference to study Magnuson-Moss procedures and to report. My belief is that Congress seeks affirmative understanding that will help it determine what rulemaking procedures it should require. I am disappointed that the Conference, after spending more than $600,000 on the study of the Commission's experience, fails to provide Congress with constructive suggestions of the kind that are much needed.

The Magnuson-Moss Act prescribes eleven items of procedure, ten of which have proved to be generally satisfactory—a notice stating with particularity the reasons for the proposed rule, public availability of all written submissions, a requirement that the rule be based on the rulemaking record, opportunity to submit rebuttal submissions in writing, findings, and reasons that go beyond a statement of basis and purpose, oral argument, time limits, taking a transcript, public availability of the transcript, and a requirement of "substantial evidence in the rulemaking record." Congress may properly consider whether all or most of those ten requirements should be added to § 553 of the Administrative Procedure Act.

Excessive cross-examination has been the central cause of the Commission's procedural

failures, even though the statute is well-designed to protect against it. The statute even authorized the Commission to forbid all cross-examination by private parties, it limits cross-examination to "disputed issues of material fact it is necessary to resolve," and the Commission's rule properly requires designation of such issues before hearing. But the Commission moved away from both the statutory limitation and its rule.

The Conference should now face the vital problem of what should be the role, if any, of cross-examination in making rules of general applicability. I believe, as the Conference said in Recommendation 72-5, that "trial-type procedures should never be required for rulemaking except to resolve issues of specific fact," and I believe the Conference should now go further and should recommend to Congress that it should forbid cross-examination except on *disputed issues of specific fact it is necessary to resolve*, defining "disputed issues" as those on which procedures short of trial-type procedure have been sufficiently used without resolving the issues, defining "specific fact" so narrowly that cross-examination by private parties when an agency is making rules of general applicability will be very rare and will not be allowed at all in most proceedings, and defining "issues . . . it is necessary to resolve" as issues susceptible of proof with evidence and whose resolution is essential to the formulation of the rule.

4. Section 305.80-2 is added to Part 305 to read as follows:

§ 305.80-2 Enforcement of petroleum price regulations (Recommendation No. 80-2).

The Emergency Petroleum Allocation Act of 1973 provides the President with broad pricing and allocation authority over petroleum products. Pursuant to this authority, a succession of agencies—including the Federal Energy Office (FEO), the Federal Energy Administration (FEA), and, since the passage of the Department of Energy Organization Act of 1977 (DOE Act), the Department of Energy (DOE)—have promulgated and enforced regulations implementing this Act.

All of these agencies have provided for administrative adjudications of contested remedial orders alleging violation of petroleum pricing regulations and seeking refund of overcharges. Congress, however, has expressly excepted these enforcement proceedings from the adjudicatory provisions of the Administrative Procedure Act. As a consequence, remedial order proceedings in these agencies, particularly FEO and FEA, have been less formal than APA proceedings and subject to intense criticism for failing to provide for full evidentiary hearings as a matter of right as well as for failing adequately to separate prosecutorial and judicial functions of agency personnel.

In the DOE Act, Congress acted to correct these perceived procedural deficiencies in the adjudication of remedial orders. Where a remedial order is contested, Section 503(c) of the Act provides an opportunity for an evidentiary hearing, including a right of cross-examination to the extent necessary for "full and true disclosure of the facts." Moreover, to guarantee a complete separation of prosecutorial and judicial functions, this hearing takes place at the Federal Energy Regulatory Commission (FERC), an independent agency within DOE not subject to the control of the Secretary of Energy.

The executive wing of DOE, however, has continued to provide for its own adjudicatory procedures when its "proposed" remedial orders are contested. All such cases are tried before the Office of Hearings and Appeals (OHA), an executive administrative unit that reports directly to the Secretary. Orders issued by OHA may then be contested at FERC pursuant to section 503(c). The net result of this approach is that two layers of administrative procedures now exist for the adjudication of remedial orders.

Elimination of Administrative Duplication

Administrative duplication can largely be eliminated either by abolishing the executive adjudicatory procedures presently utilized by the Office of Hearings and Appeals, or by abolishing the statutorily required hearing procedures at FERC. For a variety of reasons, abolishing FERC review of executive remedial orders is the preferable alternative.

FERC has little or no expertise in oil pricing matters. Moreover, it is already charged with enormous day to day responsibilities, including the implementation and enforcement of the exceedingly complex Natural Gas Policy Act. More importantly, an administrative structure that entrusts an independent commission with the power to review orders issued by a separate executive agency risks encouraging substantial policy fragmentation between the reviewing commission and the executive agency charged with the primary responsibility for promulgating rules and establishing policy in the first instance. There can be little justification for an administrative structural arrangement that risks such fragmentation, especially since the adjudicatory procedures used by the Department of Energy represent a substantial improvement over the more informal procedures followed by its predecessors.

Improvement of Administrative Procedures

As a corollary to abolishing FERC review, certain changes should be made in DOE procedures to conform generally with the APA's requirements for formal adjudications. Considerable controversy has developed over procedural provisions dealing with the burden of proof, the right of a litigant to an evidentiary hearing for resolving a disputed issue of material fact, the application of the agency's discovery rules, and the agency's failure to use administrative law judges. Given the nature of enforcement cases in general and the complexity and often enormous amounts of money at stake in these proceedings, application of the adjudicatory provisions of the APA to DOE's remedial order proceedings would be appropriate. APA proceedings can significantly increase the overall perception of fairness of the process on the part of the litigants, and will not unduly hamper the efficiency of the agency. Moreoever, to ensure that an independent decision-maker is involved at the crucial record formulation stage of these proceedings, administrative law judges should be used on a regular basis. Finally, given the particular importance of discovery in these proceedings, litigants should be afforded discovery rights which accord with the model provisions set forth in Recommendation 70-4.

Simplification of Duplicative Judicial Review

Once the internal problems of administrative duplication and procedure are solved, there remains an overarching problem—duplication of judicial review. A final remedial order issued by DOE is appealable to a United States district court, the decision of which may be appealed to the Temporary Emergency Court of Appeals. An appellate standard of review is employed at both judicial levels. This approach unnecessarily provides two essentially identical levels of judicial review.

Recommendation

1. *Administrative duplication.* FERC review of remedial orders issued by the Department of Energy pursuant to section 503 of the Department of Energy Organization Act unnecessarily duplicates the adjudicatory proceedings currently provided within DOE, risks substantial policy fragmentation between FERC and DOE, and is unnecessary to attain adequate separation of prosecutorial and judicial functions. Congress should, therefore, amend section 503 of the DOE Act so as to abolish FERC review of executive remedial orders and to provide DOE with authority to issue final remedial orders after

meeting the procedural requirements set forth below in Paragraph 2.

2. *Administrative procedures.* Congress should require that final remedial orders may be issued by DOE only after opportunity for a hearing on the record in accordance with sections 554, 556, and 557 of the Administrative Procedure Act. In applying these provisions of the APA, DOE should use administrative law judges, provide for an appeal of ALJ decisions to the Secretary, and apply agency discovery rules in accordance with Recommendation 70–4 of the Administrative Conference. In advance of congressional action, DOE should, to the extent permissible by law, voluntarily adopt procedures consonant with the above principles.

3. *Judicial review.* Appellate review of final remedial orders by United States district courts unnecessarily duplicates the appellate function of the Temporary Emergency Court of Appeals. Congress should amend the Department of Energy Organization Act to provide that final agency remedial orders are appealable, as a matter of right, directly to the Temporary Emergency Court of Appeals, or to whatever other appellate court Congress may designate.

5. Section 305.80–3 is added to Part 305 to read as follows:

§ 305.80–3 Interpretation and implementation of the Federal Advisory Committee Act (Recommendation No. 80–3).

The Federal Advisory Committee Act was enacted in 1972 in response to a wide range of criticisms concerning the activities and influence of advisory committees operating within and alongside government agencies. The need for the large number of committees in existence was questioned, and there were complaints over lack of adequate public information concerning their purposes, their membership, the course of their deliberations, and the extent of their influence. In addition, fears were expressed that committees were often inadequately balanced to reflect the spectrum of interests affected by their recommendations. Finally, the Government seemed frequently to fail to implement, or even to respond to, important recommendations offered by prestigious committees after protracted and expensive research, hearings and study.

It cannot be expected that FACA in operation would have wholly silenced the criticisms which led to its enactment. Yet, the Conference's study does indicate certain positive results from FACA, including more careful evaluation by Government of the need for establishing or continuing advisory committees, more attention paid to their makeup and responsibilities, and more openness in their deliberations. We are not prepared to recommend at this time any major revision of the statute, either to embrace more activities by committees and similar groups, or to reduce the coverage and requirements of the Act. However, there are areas where clarification and perhaps some narrowing of coverage would ease problems of administration and remove artificial barriers to communication between the agencies and the interested public. In addition, a more vigorously coordinated implementation of FACA by the Executive Branch would provide more guidance to the agencies and the public and a more consistent application of FACA within Government and in the courts.

Recommendation

1. The Federal Advisory Committee Act directs the Office of Management and Budget to "prescribe administrative guidelines and management controls applicable to advisory committees." This authority has since been transferred to the General Services Administration by Reorganization Plan No. 1 of 1977, and Executive Order 12024. Neither OMB nor GSA has made adequate use of this statutory authority to assist the agencies in resolving difficult questions involving the coverage of the Act, particularly the applicability of the Act to *ad hoc* and informally established advisory groups. As a result, courts have been faced with the need to resolve such issues without the assistance of authoritative administrative guidelines. Accordingly, GSA, in consultation with OMB and the Department of Justice, should undertake a revision of the guidelines at present contained in OMB Circular A–63, so as to provide greater assistance to the agencies, and, in particular, to deal with the problems of classification of committees experienced under the Act (see paragraph 2, below). The proposed guidelines should be made available to agencies and the general public for comment before they are finally issued, and upon issuance the guidelines should be widely published. Where a legal dispute concerning the applicability of the Act to particular advisory bodies cannot be resolved between the agency and GSA, the dispute may be submitted to the Department of Justice for resolution pursuant to Part 1–4 of Executive Order 12146.

2. The most serious problems regarding the coverage of FACA have involved the applicability of the Act (a) to groups convened by agencies, on an *ad hoc* basis, without formal organization or structure or continuing existence, to obtain views on particular matters of immediate concern to the agency, and (b) to privately established groups whose advice is "utilized" by an agency.

(a) Uncertainty as to the applicability of FACA to one-time or occasional meetings between *ad hoc* groups and Government officials has tended to discourage useful contacts with the private sector. It is impractical to require such meetings to conform with the Act's requirements regarding chartering, advance notice, and structure of the committee. The Administrative Conference believes that the Act is not applicable to *ad hoc*, unstructured, non-continuing groups and that GSA's guidelines should make this clear. Coverage of such groups would not further the purposes of the Act.

(b) The Conference believes that the definition of "advisory committee" is limited to committees either established by Government action or affirmatively supported and "utilized" by the Government through institutional arrangements which amount to the adoption of the group as a preferred source of advice. GSA's guidelines should make this clear.

(c) Agencies should be sensitive to the desirability of making available to the public advice or information obtained from private or *ad hoc* groups not covered by FACA when the agency is considering action based on such advice or information.

3. Advisory committees frequently are useful in furnishing expert technical and scholarly advice to the Government, often at little or modest cost, and in providing a valuable channel of communication between the Government and the private sector. FACA has been successful in bringing about the elimination of many unnecessary advisory committees. It continues to serve a constructive purpose in requiring agencies and GSA periodically to evaluate the usefulness of each advisory committee, but such a review should be objective and should not be premised on any assumption that fewer advisory committees is a desirable goal in and of itself.

Separate Statement of Alexis C. Jackson

The consideration and study of the Federal Advisory Committee Act by the Administrative Conference has been a valuable and necessary exercise. However, I do have some reservations and additional comments to make regarding Recommendation 80–3, ¶¶ 2(a–c).

Recommendation 80–3, ¶ 2(a) causes substantial concern. We in the Department of the Interior have consistently interpreted the Advisory Committee Act to include so-called *ad hoc* committees. We have based this interpretation on the clear statutory language of Section 3 of the Act together with the spirit of openness in government embodied in the Act. We believe our interpretation to be well-founded. When the courts have been presented with the question of the applicability of FACA to *ad hoc* committees they have, with only one exception, ruled that the committees are *not* exempt from the Act. In the one case where an *ad hoc* committee was held to be outside the Act, *Nader* v. *Baroody*, 396 F. Supp. 1231 (D.D.C. 1975), the decision reflected the possible constitutional consequences of restricting meetings within the Office of the President, together with the very loose nature of those meetings.

The recommendation to exclude *ad hoc* committees administratively is fraught with problems. If our interpretation is correct, the General Services Administration (GSA) would be powerless to amend the statute by its own interpretation. Any such attempted interpretation would lead only to confusion and ultimately to litigation by members of the public who have been excluded from viewing or participating in such meetings. It is likely that such litigation would be directed at the

agencies that utilize such committees—not GSA.

Moreover, even if authorized, the recommendation invites abuse. Agencies seeking to circumvent the requirements of the Act would merely characterize committees as *ad hoc*. If an additional meeting or meetings are required, the agency could simply call another excepted *ad hoc* meeting. In the interest of a free and open democratic government, the chartering of all advisory committees should not be viewed as an overwhelming burden, even those which last for only several hours. The burden is in the artificial barriers imposed by GSA in the consultation process.

Similarly, I feel constrained to take issue with Recommendation 80–3, ¶ 2(b). The case of *Lombardo* v. *Handler*, 397 F. Supp. 792 (D.D.C. 1975), *aff'd*, 546 Fed. 1043 (D.C. Cir., 1976, *cert denied*, 431 U.S. 932 (1977), suggests a far more liberal interpretation of the term "utilize" than contemplated by the Recommendation. So does *Center for Auto Safety* v. *Cox*, 580 F. 2d 689 (D.C. Cir. 1978). These cases foreclose the suggestion contained in the recommendation, ¶ 2(b). I believe GSA could assist agencies by more clearly defining "utilize" in its guidelines.

Recommendation 80–3, ¶ 2(c) underscores the need for careful consideration of the issues presented in the matter of FACA's interpretation. Paragraph 2(c) contains the mere precatory suggestion that agencies should be "sensitive" to the need for making advice received from *ad hoc* committees available to the public when considering action based on such advice. This might be read as a retreat from previous Conference expressions, see Recommendation 77–3, regarding making publicly available the substance of communications from outside the agency in pending rulemaking proceedings.

To conclude, I am not troubled by the interpretation the courts have given FACA. I do believe, however, that the chartering of committees should be facilitated by GSA rather than hindered by it. The consultation process originally contemplated was designed to be just that—consultation—and not one of final determination of whether a committee ought to be established. That determination is reserved to the agency head. If this original concept were to be reborn, agencies could more effectively and supportively comply with the Act.

As I read them, Recommendation 80–3, ¶¶ 2(a) and 2(b) seek to change the coverage and scope of the Act. This, of course, contradicts the preamble of Recommendation 80–3 which states "We are not prepared to recommend * * * any major revision to the statute * * *" In view of the stated intention, we believe the Conference should reconsider Recommendation 80–3, ¶¶ 2(a–c) and adopt a revised recommendation (attached) in accordance with the views outlined in this statement.

If on the other hand, the Conference does not revise Recommendation 80–3 ¶¶ 2(a–c), the substance of its proposal should be submitted for legislative action.

Attachment to Separate Statement

Suggested Revision of Recommendation 80–3, paragraphs 2(a–c)

2(a) *Ad hoc* groups which meet with government officials on a one-time or occasional basis are advisory committees under FACA. It is therefore necessary for such meetings to conform with the Act's requirements regarding chartering, advance notice, and structure of the committee. The Administrative Conference believes that conformance to the Act will be facilitated by GSA adhering to a consultant's role as contemplated in Section 9(a)(2) of the Act rather than a role of determining whether a committee should be established.

(b) The Conference believes that the definition of "advisory committee" includes committees either established by Government action or supported and "utilized" by the Government through consideration by the Government of the committee's advice. GSAs guidelines should make clear the application of the term "utilize."

(c) Advice or information obtained from private or *ad hoc* groups in an *ex parte* manner is not sanctioned. To the extent that agencies do receive such advice or information, the Administrative Conference believes that agencies should make such advice available to the public, particularly when the agency is contemplating action (such as rulemaking) which may be based on or use such advice or information.

6. Section 305.80–4 is added to Part 305 to read as follows:

§ 305.80–4 Decisional officials' participation in rulemaking proceedings (Recommendation No. 80–4).

Several recent lawsuits have challenged the propriety of an official's participation in rulemaking proceedings. In those cases, efforts were made to force the "disqualification" of persons whose judgment might shape an agency's regulations, much as disqualification might have been sought in an adjudicatory proceeding allegedly tainted by the adjudicator's bias.

The concepts of bias (real or supposed) pertinent to the fairness of a judicial trial or an administrative adjudicatory hearing have limited applicability to rulemaking proceedings. The political, legislative, and institutional aspects of the rulemaking function and the frequency with which persons selected for policy-making responsibilities are selected precisely because they have previously declared their beliefs make direct application of a judicial test for disqualification inappropriate. Moreover, the determinants of a "fair hearing" that are implicit in the due process clause are inapplicable in proceedings of an essentially legislative nature, whose procedures are controlled by statutory rather than consitutional provisions.

Nevertheless, the acceptability of regulations and, indeed, the repute of the administrative process may be seriously impaired if the judgment of agency officials who can determine the content of rules is considered to have been tainted by a conflict of interest, by an inflexible prejudgment of pertinent factual propositions, or by indecorous manifestations of hostility. Each administrative agency that possesses power to promulgate regulations should adopt procedures and standards that define whether an official should abstain (or, if need be, be barred by the agency) from participating in a particular rulemaking proceeding.

The recommendation that follows proposes minimum standards of propriety. More exacting standards may be formulated by an agency for the conduct of its affairs or may be self-imposed by an official who on his own motion chooses not to participate in a particular proceeding. The basic proposition underlying the recommendation is that unimpaired capacity to exercise a fully informed judgment, as well as freedom from personal, private interest in the outcome of particular matters, is implicitly demanded of those to whom Congress has granted power to formulate rules for the future.

The standards sketched here are consonant with those embodied in statutes that govern government employees' behavior, in statutory procedures that have generally been provided for rulemakings, and in the six precepts of ethical employee behavior formulated by the Office of Personnel Management.[1]

The following recommendation is directed toward agencies that conduct rulemaking proceedings under the informal procedures of the Administrative Procedure Act, 5 U.S.C. 553, or particular statutes defining rulemaking procedures other than formal, on-the-record rulemaking. The recommendation relates solely to agency personnel with decisional responsibilties in the rulemaking process. Definition will perforce vary from agency to agency because of differences in internal organization and

[1] 5 C.F.R. § 735.201a:

"An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government."

allocation of responsibility. No suggestion is made here that every public employee who, at one stage or another, may contribute in one manner or another to rulemaking proceedings is to be subjected to interminable tests of probity and objectivity before the ultimately responsible "decisional personnel" can act.

Recommendation

A. *Procedures.* 1. Each rulemaking agency should promulgate procedures by means of which persons who desire to participate in a rulemaking proceeding (or who may be affected by its outcome) can challenge the suitability of participation by particular decisional personnel in that proceeding. The procedures should identify the factors that bear on suitability and should indicate the appropriate time, place, and means of making challenges, along with an indication of opportunity for intra-agency review if one be available.

2. The procedures should also make plain that a decisional official, whether or not challenged, may voluntarily abstain from participating in a particular proceeding.

B. *Conflict of Interests.* 1. A decisional official whose financial interests or those of whose immediate family may be distinctively favored by choices to be made in a particular rulemaking proceeding should voluntarily abstain (or be required by the agency to abstain) from participation in that proceeding, subject to publicly stated and applied agency exception for *de minimis* holdings.

2. New agency officials should be subjected to "cooling off" periods of variable duration, during which their participation in a rulemaking proceeding would presumably be inappropriate if

(i) The proceeding specifically affects the financial interests of an immediately prior employer or client; or

(ii) The official's immediately prior employer or client is a participant in the proceeding; or

(iii) The official has participated in the proceeding before becoming a public employee.

An agency's application of a "cooling off" requirement should not, however, reflect absolutes. It should take into account the following factors, singly or in combination:

(a) The extent of the official's participation in a prior private capacity in the pending rulemaking proceeding;

(b) The elapse of time between the prior involvement and the official's present activity as a public employee;

(c) The nature and magnitude of the rulemaking's possible impact on the interests of the prior employer;

(d) The generality or specificity of the rulemaking's scope;

(e) The extent of the prior employer's participation;

(f) Applicable professional standards;

(g) Senatorial consideration, during the confirmation process, of the official's prior relationships and activities.

3. An official's non-financial interests, associations, or activities (whether or not related to past employment) may in some instances suggest the desirability of recusal or, if need be, a direction to the official to abstain from participating in a particular proceeding. If the official's appointment has been confirmed by the Senate with knowledge of the appointee's past interests and activities, a required cooling off period would ordinarily be inappropriate. As to officials of lesser prominence, however, agencies may suitably utilize in respect of nonfinancial interests the procedures sketched above, related to financial conflict of interests or to cooling off periods. The question of precluding participation should arise only when an identifiable interest is significant in relation to the proceeding and is likely to be substantially affected by its outcome. Mere membership in an association would not ordinarily be a ground for disqualification or recusal.

4. Finally, agency conflict of interests rules should make emphatically plain that they are in aid of the agency's self-management; that they are measures in furtherance of its own quality control rather than in amplification of judicial control; and that they are agency declarations for guidance of its own staff concerning decorum. An agency that is insensitive or lax in fulfilling its declared expectations will no doubt be of concern to the Congress or to the Executive, but an agency's heightened attentiveness to the qualities of decisional personnel should plainly not expand the occasions for or the scope of review of rulemaking proceedings.

C. *Prejudgment of Fact.* 1. Disqualification for prejudgment in rulemaking should be limited to prejudgments of particular "adjudicative" or "specific" facts, where it may be inferred from the particular statutory framework, agency procedural choices, or other special circumstances that the agency's determination of those facts is to be based on the evidentiary record developed in the proceeding. Cause for disqualification can appropriately be decided by the agency only after it is established in the proceeding that such facts will be materially at issue in the proceeding. Such disqualification is inappropriate for factual judgments that are the consequence of earlier stages of the proceeding, or for prejudgments of policy.

2. To avoid undue interference with the legislative, policymaking aspect of the rulemaking process and other agency functions, disqualification for prejudgment of fact should be considered by the agency only after it has determined that critical "adjudicative" or "specific" facts require resolution on the evidentiary record developed in the proceeding, and should require at least a preponderant showing that an agency member or decisional employee has a closed mind regarding those facts.

D. *Decorum and Expression of Views.* A rulemaking proceeding should be conducted with decorum and respect for the interests of all concerned. Agency officials should therefore conscientiously avoid intemperate expression or other behavior suggestive of an irrevocable commitment to a predetermined outcome of the proceeding. This does not mean, however, that agency officials may not express factual judgments based on previous experience or on information received during a proceeding; nor does it suggest that officials may not act upon or voice opinions concerning underlying issues of policy. Expressing those opinions in interchanges with committees of the Congress, other administrative bodies, the public, and regulated groups is a desirable normality of administration, rather than an abnormality to be shunned, and is not a basis on which exclusion from a proceeding may appropriately be suggested.

Dated: July 7, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80-20685 Filed 7-10-80; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 353

Restoration to Duty; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: This change corrects final restoration to duty regulations that were published in the Federal Register on October 2, 1979.

EFFECTIVE DATE: October 2, 1979.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, Office of Policy Analysis and Development, Staffing Services, Office of Personnel Management, Room 6526, 1900 E Street, N.W., Washington, D.C. 20415; (202) 632-6817.

SUPPLEMENTARY INFORMATION: On October 2, 1979, the Office published a final amendment to § 353.306 in the Federal Register, deleting the 1-year limitation during which agencies are required to make every effort to restore partially recovered injured employees. A corresponding amendment to the appeal right entitlement in § 353.401(a)(3) should have been made at the same time, but was inadvertently overlooked. The purpose of this amendment is to correct this oversight.

The Director of OPM finds that good cause exists for suspending the 30-day delay of effectiveness of final regulations required by 5 U.S.C. 553(d). Similarly, the Director finds that since this is a nonsubstantive amendment which corrects an administrative oversight, the notice of proposed rulemaking normally required by 5 U.S.C. 553(b), is unnecessary. This is a non-significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

PART 353—RESTORATION TO DUTY

Accordingly, the Office of Personnel Management is revising § 353.401(a)(3) of Title 5, Code of Federal Regulations, to read as follows:

§ 353.401 Appeals.

(a) * * *

(3) Injured employees who partially recover may appeal to the MSPB for a determination of whether their agencies are acting arbitrarily and capriciously in denying them restoration. Injured employees who fully recover more than 1 year after they begin receiving compensation may appeal as provided for in Parts 302 and 303 of this chapter.

* * * * *

(5 U.S.C. 8151)

[FR Doc. 80-20815 Filed 7-10-80; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 752

Adverse Actions; Republication of Regulations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document republishes OPM's Adverse Action regulations, part of which were excluded from the 1980 codification of OPM's regulations through editorial oversight.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones 202-254-7086.

SUPPLEMENTARY INFORMATION: On July 31, 1979, OPM published interim regulations (5 CFR Part 752, Subparts E and F) on adverse actions in the Senior Executive Service (SES) at 44 FR 44819.

On August 10, 1979, at 44 FR 47032, OPM published a revision of Subparts A through D of Part 752.

Through an oversight, Subparts E and F were excluded from the 1980 codification of 5 CFR. For clarity, the entire Part 752 is reprinted below as a convenience to the reader.

OPM has determined that this is a non-significant regulation for the purposes of EO 12044.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, OPM is republishing Part 752 of Title 5, Code of Federal Regulations, to read as follows:

PART 752—ADVERSE ACTIONS

Authority: 5 U.S.C. 7504, 7514; 5 U.S.C. 1302, Pub. L. 95-494.

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

§ 752.101 Principal statutory requirements.

This subpart incorporates the principal statutory requirements for suspensions for 14 days or less, found in subchapter II of chapter 75 of title 5, United States Code.

CHAPTER 75—ADVERSE ACTIONS

Subchapter I—Suspension for 14 Days or Less

§ 7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

§ 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

§ 752.201 Coverage.

(a) *Actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7501(1), including an employee of the Government Printing Office; and

(2) An employee with competitive status who occupies a position under Schedule B of Part 213 of this chapter.

(c) *Definitions.* In this subpart, *Day* means calendar day. *Suspension* has the meaning given in 5 U.S.C. 7501(2).

(d) *Exclusions.* This subpart does not apply to actions excluded by 5 U.S.C. 7502, or to a suspension for 14 days or less:

(1) Taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter I, chapter 75 of title 5, United States Code; or

(2) Of a reemployed annuitant.

§ 752.202 Standard for action.

(a) An agency may take action under this subpart only as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.203 Procedures.

(a) *Employee entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Notice of proposed action.* The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(c) *Time to answer.* The employee shall be given a reasonable time to answer but not less than 24 hours.

(d) *Representation.* 5 U.S.C. 7503(b)(3) provides that an employee covered by this part is entitled to be represented in a suspension action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(e) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the empoloyee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(f) *Agency records.* The agency shall maintain copies of the items specified in 5 U.S.C. 7503(c) and shall furnish them upon request as required by that subsection.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal statutory requirements.

This subpart incorporates the principal statutory requirements in subchapter II of chapter 75 of title 5, United States Code, for removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

CHAPTER 75—ADVERSE ACTIONS

Subchapter II—Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

(2) "suspension" has the meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advise and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

§ 7512. Actions covered

This Subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reducation in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative, and

(4) a written decision and the specific reasons therefore at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and an order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

Subpart D—Regulatory Requirements Implementing Subpart C

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to an action set forth in subchapter II of chapter 75 of title 5, United States Code, including but not limited to:

(1) An action based solely on nonperformance related factors;

(2) An action that involves both performance and nonperformance related factors; and

(3) A solely performance-based action which is taken by an agency that is not included within the definition of agency under subchapter I of chapter 43 of title 5, United States Code.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(A), including an employee of the Government Printing Office and an employee of the Administrative Office of the United States Courts;

(2) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(B); and

(3) an employee with competitive status who occupies a position in Schedule B of Part 213 of this title,

(c) *Exclusions.* The subpart does not apply to actions and employees excluded by 5 U.S.C. 7511(b) and 7512, or the following;

(1) Action taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(2) Action which entitles an employee to grade retention under Part 536 of this title, and an action to terminate this entitlement;

(3) Voluntary action initiated by the employee;

(4) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this title;

(5) Involuntary retirment because of disability under Part 831 of this title;

(6) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(7) Action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

(8) Cancellation of a promotion to a position not classified prior to the promotion;

(9) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment;

(10) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation;

(11) A reemployed annuitant;

(12) A Presidential appointee;

(13) A National Guard Technician; or

(14) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under chapter 73 of title 38, United States Code.

§ 752.402 Definitions.

In this subpart, *Day* means calendar day. *Furlough* has the meaning given in 5 U.S.C. 7511(5). *Grade* has the meaning given in 5 U.S.C. 7511(3). *Pay* has the meaning given in 5 U.S.C. 7511(4). *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.403 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7513(a).

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician under Section 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with subsection (g) of this section.

(d) *Exceptions.* (1) 5 U.S.C. 7513(b) authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(3) The 30 days' advance written notice is not required for a suspension during the notice period of a removal or of an indefinite suspension when the circumstances are such that retention of the employee in an active duty status during the notice period may be injurious to the employee, his or her fellow workers, or the general public; may result in damage to Government property; or because of the nature of the employee's offense may reflect unfavorably on the public perception of the Federal service. The agency shall include in the notice of suspension the reasons for not retaining the employee in an active duty status during the notice period of a removal or indefinite suspension. The agency may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the suspension.

(e) *Representation.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective

bargaining agreement govern representation for employees in an exclusive bargaining unit.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective. The notice shall tell the employee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this subpart or, where applicable, to file a grievance under the negotiated grievance procedure, but not both.

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

Subpart E—Principal Statutory Requirements for Taking Adverse Actions Under the Senior Executive Service

§ 752.501 Principal statutory requirements.

This subpart sets forth for the benefit of the user the statutory requirements of subchapter V of Chapter 75 for suspension for more than 14 days and removal from the civil service. (5 U.S.C. 7541–7543)

"§ 7541. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means a career appointee in the Senior Executive Service who—

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' as the meaning set forth in section 7501(2) of this title.

"§ 7542. Actions covered

"This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

"§ 7543. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.".

Subpart F—Regulatory Requirements for Taking Adverse Actions Under the Senior Executive Service

Authority: 5 U.S.C. 7543.

§ 752.601 Coverage.

(a) *Adverse actions covered.* This subpart applies to suspensions for more than 14 days and removals from the civil service as set forth in 5 U.S.C. 7542.

(b) *Exclusions.* This subpart does not apply to actions under 5 U.S.C. 1206, 3592, and 7532.

(c) *Employees covered.* This section covers a career appointee—

(1) Who has completed the probationary period in the Senior Executive Service;

(2) Who is not requried to serve a probationary period in the Senior Executive Service; or

(3) Who was covered under 5 U.S.C. 7511 immediately before appointment to the Senior Executive Service.

§ 752.602 Definitions.

In this subpart,

(a) *Career appointee* has the meaning given in 5 U.S.C. 3132(a).

(b) *Day* means calendar day.

(c) *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.603 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7543(a).

(b) An agency may not take an adverse action against a career appointee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.604 Procedures: Adverse actions.

(a) *Statutory entitlements.* A career appointee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7543(b).

(b) *Notice of proposed action.* (1) The notice of proposed action shall inform the career appointee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(2) The agency may not use material which cannot be disclosed to the appointee or to his or her representative or designated physician under § 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(c) *Appointee's answer.* (1) The agency shall give the career appointee a reasonable amount of time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the career appointee's oral answer who has authority either to make or recommended a final decision on the proposed adverse action.

(3) The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with § 752.604(g).

(d) *Exceptions.* (1) 5 U.S.C. 7543(b)(1) authorizes an exception to the 30 day advance written notice when the crime provision is invoked. The agency may require the career appointee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action,

the agency may place the career appointee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The 30 days' advance written notice is not required for placing a career appointee in a nonduty status with pay during the notice period of a removal or a suspension for more than 14 days when the circumstances are such that retention of the career appointee in an active duty status:

(i) May be injurious to the appointee, his or her fellow workers, or the general public;

(ii) May result in damage to government property; or

(iii) May, because of the nature of the appointee's offense, reflect unfavorably on the public perception of the Federal service. The agency shall include in the notice the reasons for not retaining the appointee in an active duty status during the notice period of a removal or a suspension for more than 14 days. The agency may require the appointee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the appointee in a nonduty status with pay for such time, not to exceed ten days.

(e) *Representation.* (1) 5 U.S.C. 7543(b)(3) provides that an appointee covered by this part is entitled to be represented by an attorney or other representative.

(2) an agency may disallow as an appointee's representative:

(i) an individual whose activities as a representative would cause a conflict of interest or position;

(ii) an employee of the agency whose release from his or her official position would give rise to unreasonable costs; or

(iii) An employee of the agency whose priority work assignments preclude his or her release.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the career appointee or his or her representative made to a designated official. The agency shall deliver the notice of decision to the appointee at or before the time the action will be effective. The notice of decision shall inform the appointee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7543(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.605 Appeal rights: Adverse actions.

Under the provisions of 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency shall maintain copies of the adverse action record items specified in 5 U.S.C. 7543(e) and shall furnish them upon request as required by that subsection.

[FR Doc. 80-20816 Filed 7-10-80; 8:45 am]

BILLING CODE 6325-01-M

5 CFR PART 831

Retirement; Exclusions From Retirement Coverage

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This regulation is being issued under the Civil Service Retirement Act to provide coverage to retired employees and Members of Congress who are receiving a Civil Service Retirement annuity and who are appointed by the President to fill unexpired terms of office limited to one year or less.

EFFECTIVE DATE: January 1, 1976.

FOR FURTHER INFORMATION CONTACT: Ms. Jane DePriest, (202) 632-4684, Office of Pay and Benefits Policy, Compensation Group, Room 4334, 1900 E Street NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: On March 14, 1980, the Office of Personnel Management published § 831.201(a)(1) in the Federal Register (45 FR 16493) as a proposed rule, with a request for comments from interested parties before publication as a final rule. Four comments were received, two agreeing with the change and two objecting based on its limited applicability. It is true that the change is expected to have only limited applicability but this does not, in our opinion, weigh against equalizing the treatment of non-Member and Member annuitants. OPM is therefore revising § 831.201(a)(1) as proposed.

The Director of OPM finds that in order to carry out Congress' intent to equalize the treatment of employee annuitants through the enactment of Public Law 94-397, good cause exists for suspending the 30-day delay of effectiveness of final regulations required by 5 U.S.C. 553(d), and making this rule effective January 1, 1976.

OPM has determined that this is a significant regulation for the purposes of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

PART 831—RETIREMENT

Accordingly, the Office of Personnel Management is revising 5 CFR 831.201(a)(1) to read as follows:

§ 831.201 Exclusions from retirement coverage.

(a) * * *

(1) Employees serving under appointments limited to one year or less, except annuitants appointed by the President to fill unexpired terms of office on or after January 1, 1976.

* * * * * *

(5 U.S.C. 8347)

[FR Doc. 80-20814 Filed 7-10-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

United States Standards for Grade of American Upland Cotton; Updates and Amendments to the Cotton Standards Regulations; Withdrawal of Proposed Revocations, and Technical Amendments to the Cotton Standards Regulations.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations (7 CFR Part 28) under the United States Cotton Standards Act by providing reference to the United States Cotton Futures Act (7 U.S.C. 15b) and the regulations thereunder (7 CFR Part 27). It also makes a technical correction in the list of the official grades by deleting four grades, thus reflecting revocations which were effective in 1975. Other proposed changes in the Grade Standards, as published in the Federal Register April 1, 1980 (40 FR 21261) are withdrawn.

EFFECTIVE DATE: August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Harvin R. Smith, Chief, Standards and Testing Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-2167). The Final Impact Statement considered in developing this final rule and the impact

of implementing it is published in its entirety in "Supplementary Information."

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." It was determined that no Impact results insofar as this final action involves: (1) The withdrawal of proposed changes to the regulations, (2) The conforming of a table to previous actions taken, and (3) The establishment of a clarifying reference.

Proposed changes in Grade Standards were discussed at the Universal Standards Conference, May 19–20, 1980, Memphis, Tennessee. All overseas signatories to the Universal Standards Agreement and all segments of the domestic cotton industry were represented at this conference. There was unanimous agreement among the various groups that no changes in Grade Standards should be made at this time. In General, the group felt that the Grade Standards in question, although representing very little of U.S. production, were very important in overseas trading and in arbitration proceedings. Therefore, the recommendation was made that the standards be retained. The Department of Agriculture is honoring this request and is withdrawing the proposal to effect changes to the Grade Standards.

The following amendments to the regulations (7 CFR Part 28) issued pursuant to the United States Cotton Standards Act (7 U.S.C. 51 et seq.) provide references and updates. They are effective August 1, 1980.

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

Add a new § 28.482 to read as follows:

§ 28.482 United States Cotton Futures Act.

The cotton standards contained in § 28.301 through § 28.603 of this part shall be effective for purposes of the United States Cotton Futures Act (7 U.S.C. 15b) and the regulations thereunder (7 CFR Part 27).

§ 28.52 [Amended]

2. In paragraph (a) of § 28.525, delete from the table of Full grade name, Symbol, and Code No., respectively, the following which were revoked effective July 1, 1975 (30 FR 22939):

"Strict Good Middling—SGM, 01,"
"Good Middling Tinged—GM Tg, 14,"
"Good Middling Yellow Stained—GM Ys, 15," and
"Below Strict Low Middling Light Gray—BG, 86."

(Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply sec. 6, 42 Stat. 1518, as amended; 7 U.S.C. 56)

Dated: July 8, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-20787 Filed 7-10-80; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 28

Cotton Classing, Testing, and Standards

AGENCY: Agricultural Marketing Service.

ACTION: Final rulemaking.

SUMMARY: This notice finalizes revisions in the sampling regulations for cotton submitted for official USDA classification under the United States Cotton Standards Act and the Smith-Doxey Amendment to the Cotton Statistics and Estimates Act.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250—(202) 447–2147. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." A cotton sample consists of two portions, one drawn from each side of the bale. Under current regulations the sampler has two options in sampling a bale when the two samples are needed. The first option is to make two cuts on each side of the bale and the second option is to make a cut approximately 24 inches on each side of the bale and break the two portions in half across the layers. On April 18, 1980, a change in sampling regulations was proposed which would permit the sampler a third option. It will allow the sampler to split each segment lengthwise along the layers making two samples. However, only the sample containing the two outside portions will be eligible for USDA classification. This means samples received for official USDA classification will be unchanged. This change will be another step forward to reduce excessive cutting of cotton bales.

Much attention has been directed in recent years to the multiple sampling of cotton bales and the problems caused by numerous cuts in the protective covering of the cotton. The cotton industry has requested USDA to adopt policies which would discourage multiple sampling of cotton bales. This change is consistent with industry recommendations and recently revised Commodity Credit Corporation regulations.

Only two cotton industry firms objected to the proposed change in regulations. These two objections are far outweighted by the support received for this change from such organizations as the Joint Industry Bale Packaging Committee and the National Cotton Council, both of which represent all segments of the cotton industry.

In order to effect this change, the following amendments are made in 7 CFR Part 28, Subpart A—Regulations under The United States Cotton Standards Act, and Subpart D—Cotton Classification and Market News Services for Organized Groups of Producers:

1. Amend § 28.25(c) to read as follows:

§ 28.25 Samples for Form A determination.

* * * * *

(c) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers provided the outside portion from each side is submitted for the official classification.

* * * * *

2. Amend § 28.908(b) to read as follows:

§ 28.908. Samples.

* * * * * *

(b) *Drawing of samples manually.* (1) Each cut sample shall be drawn from the bale after it is tied out following the ginning process, and shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale: *Provided,* That each sample from a bale of American Pima cotton shall be approximately 10 ounces in weight, not less than 5 ounces of which are to be drawn from each side of the bale.

(2) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the

portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers, provided the outside portion from each side is submitted for the official classification.

* * * * *

(Section 10, 42 Stat. 1519, Sec. 3c, 50 Stat. 62; 7 U.S.C. 61, 473c)

Dated: July 8, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-20813 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 275

Food Stamp Program; Performance Reporting System; Establishment of Requirements; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published March 11, 1980 which set forth requirements for the establishment of the Performance Reporting System under the Food Stamp Act of 1977.

FOR FURTHER INFORMATION CONTACT: Maurice Tracy, Chief, Performance Reporting System Branch, State Operations Division, Food and Nutrition Service, USDA, Washington, D.C. 20250 (202) 447-8755.

SUPPLEMENTAL INFORMATION: In 45 FR 15884 (March 11, 1980), § 275.7(e)(5) contains an error. On page 15903 (middle column) the phrase "* * * unless the required sample size is two or less * * * is corrected in this rulemaking by replacing the reference to "two" with "three."

1. Therefore, § 275.7(e)(5) is corrected to read as follows:

§ 275.7 Selection of sub-units for review.

* * * * *

(e) *Selection of Sub-Units in Project Areas with Caseloads of 3,000 or more Participating Households.* * * *

(5) *Selection of Sub-Units with Special Characteristics.* When a sub-unit has some special characteristics, (e.g., large nonassistance caseload, operation of itinerant issuance points, etc.) or is suspected of having a specific problem in its operation of the program, the sub-unit may be selected from its classification before the required random sample selection is initiated. When a sub-unit is selected based upon such considerations, it shall be eliminated from the frame from which it was selected and the required sample size for that frame shall be reduced by one. It is important to note that selection of sub-units on a non-random basis must be completed prior to selection of the required random samples. If the State elects to select sub-units on a nonrandom basis, no more than 25 percent of the sub-units selected from any classification shall be selected in this manner, unless the required sample size is three or less, in which case the State may select one sub-unit in this manner. For example, if the required sample size for issuance offices is four, three of these must be selected randomly.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011-2027))

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: June 24, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-20630 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

Gypsy Moth and Browntail Moth; List of Hazardous Recreational Vehicle Sites

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Final rule.

SUMMARY: This document amends the list of gypsy moth hazardous recreational vehicle sites under the Federal Gypsy Moth and Browntail Moth Quarantine and regulations by adding a site in Massachusetts. This amendment is necessary as an emergency measure in order to prevent the artificial spread of gypsy moth.

DATES: Effective date of this amendment July 11, 1980. Written comments concerning this final rule must be received on or before September 9, 1980.

ADDRESS: Written comments concerning this final rule should be submitted to H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. Due to the possibility that gypsy moth could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Written Comments

Interested persons are invited to submit written comments concerning the final rule. Comments should bear a reference to the date and page numbers of this issue of the Federal Register. All written comments made pursuant to this document will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, in a manner convenient to the public business (7 CFR 1.27(b)).

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a highly destructive pest of forest trees. The Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 *et seq.*)

quarantines certain States because of the gypsy moth, including Massachusetts, and restricts the interstate movement from quarantine States of articles designated as regulated articles because of the gypsy moth. Such restrictions are necessary for the purpose of preventing the artificial spread of the gypsy moth.

In § 301.45–1(v) of the regulations (7 CFR 301.45–1(v)) recreational vehicles and associated equipment are listed as regulated articles because of the gypsy moth if moving from hazardous recreational vehicle sites listed in § 301.45–2c of the regulations (7 CFR 301.45–2c). It is provided in § 301.45–2(d) of the regulations (7 CFR 301.45–2(d)) that the Deputy Administrator shall list as hazardous in § 301.45–2c of the regulations any recreational vehicle site in a quarantined State in which gypsy moth has been found by an inspector, or in which there is a risk of infestation of the gypsy moth because of the proximity of the site to infestation of the gypsy moth.

Based on findings of egg masses, larvae, and pupae of the gypsy moth by inspectors of the U.S. Department of Agriculture and State agencies of Massachusetts, it has been determined that the R. C. Nickerson State Park, a recreational vehicle site in the town of Brewster in Barnstable County in Massachusetts harbors infestations of the gypsy moth. Inspectors also found that this is a site where recreational vehicles and associated equipment are parked, or may be parked, and that the gypsy moth could hitchhike on and be spread by recreational vehicles and associated equipment moving from this site. Therefore, in order to prevent the artificial spread of gypsy moth, it is necessary as an emergency measure to add this recreational vehicle site to the list of hazardous recreational vehicle sites, and thereby impose restrictions on the interstate movement of recreational vehicles and associated equipment moving from such site.

Also, for purposes of information it should be noted that in a document published in the Federal Register on June 27, 1980 (45 FR 43366), the list of hazardous recreational vehicle sites was revised to read as follows:

New Jersey

Burlington County. Shamong Township: Atsion Lake and Goshen Pond camping areas in Wharton State Forest.
Cape May County. Dennis Township: Belleplain State Forest.
Hunterdon County. Delaware Township: Bull's Island State Park.
Middlesex County. Old Bridge Township: Cheesequake State Park.
Monmouth County. Howell Township: Allaire State Park.
Sussex County. Hampton Township: Swartswood State Park.
Warren County. Pahaquary Township: Worthington State Forest.

Pennsylvania

Clinton County. Renovo: Evanco camping area.
Pike County. Dingman's Ferry: Bernie's Campground.

Accordingly, § 301.45–2c of the Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45–2c), which, as noted above, was revised on June 27, 1980, is revised to read as follows:

§ 301.45–2c List of hazardous recreational vehicle sites.

The recreational vehicle sites listed below are designated as gypsy moth hazardous recreational vehicle sites within the meaning of the provisions of this subpart as indicated below.

Hazardous Recreational Vehicle Sites

Massachusetts

Barnstable County. Brewster: R. C. Nickerson State Park.

New Jersey

Burlington County. Shamong Township: Atsion Lake and Goshen Pond camping areas in Wharton State Forest.
Cape May County. Dennis Township: Belleplain State Forest.
Hunterdon County. Delaware Township: Bull's Island State Park.
Middlesex County. Old Bridge Township: Cheesequake State Park.
Monmouth County. Howell Township: Allaire State Park.
Sussex County. Hampton Township: Swartswood State Park.
Warren County. Pahaquary Township: Worthington State Forest.

Pennsylvania

Clinton County. Renovo: Evanco camping area.
Pike County. Dingman's Ferry: Bernie's Campground.

(Secs. 8 and 9, 37 Stat. 318, as amended, secs. 105 and 106, 71 Stat. 32, 71 Stat. 33; 7 U.S.C. 161, 162, 150dd, 150ee; 37 FR 28464, 28477, as amended; 38 FR 19141)

Done at Washington, D.C., this 8th day of July 1980.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-20780 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 354

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of the Plant Protection and Quarantine performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, U.S. Department of Agriculture, Hyattsville, MD 20782 (301–436–8247).

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. Nicholas E. Bedessem, Special Assistant to the Administrator, made this determination because commuted traveltime allowances are strictly a function of where the APHIS employee lives in relation to the place overtime or holiday duty is performed. As employees are transferred or change their residence or as the place of inspection changes, the number of hours of commuted traveltime allowed may change. These amendments merely reflect such changes and serve to notify the public of the new allowed hours.

It is to the benefit of the public that these instructions be made effective at the earliest practicable date. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions

appearing at 7 CFR 354.2, as amended, January 5, September 28, December 18, 1979, and March 21, 1980, (44 FR 1364, 55791, 74791, and 45 FR 18367) prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

Commuted Traveltime Allowances (in hours)

Location covered	Served from	Metropolitan area	
		Within	Outside
Add:			
* * * * *			
Illinois:			
O'Hare International Airport, Chicago.	Milwaukee, WI		5
* * * * *			
Maine:			
Portland	Harpswell		2
Portland	Wiscasset		3
* * * * *			
New Hampshire:			
Keene Airport, Keene.	Canaan		4
Keene Airport, Keene.	Groton		6
* * * * *			

(64 Stat. 561; (7 U.S.C. 2260))

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Done at Washington, D.C., this 7th day of July 1980.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-20642 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 260]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period July 13–19, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 13, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 31, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on July 8, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is active.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.560 Lemon Regulation 260.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period July 13, 1980 through July 19, 1980, is established at 275,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 9, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-20952 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 928

[Papaya Regulation 10, Amdt. 5]

Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment suspends grade and size requirements for papayas handled within the production area and for export shipments during the remainder of the 1980 season—July 8 through December 31, 1980. Such action recognizes the current and prospective marketing situation for Hawaiian papayas and is consistent with the composition of the crop and would be in the interest of producers and consumers.

EFFECTIVE DATE: July 8, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: *Findings.* This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." This amendment is issued under the marketing agreement and Order No. 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Papaya Administrative Committee and upon other information. This action would tend to effectuate the declared policy of the act.

The committee reports that heavy rains and gale force winds in the

production area during the early part of the season reduced available supplies of papayas. Increased supplies of papayas had been anticipated during the latter part of the season. The committee in its meeting held June 27, 1980, discussed production levels and predicted levels through the remainder of the 1980 season. It was the consensus of the committee that production levels would remain below last year. To provide adequate fruit for market demand, every opportunity should be provided shippers to move all marketable fruit. Therefore, the committee has recommended suspension of grade and size requirements for papayas handled to destinations within the production area and for export shipments during the remainder of the 1980 season—July 8 through December 31, 1980.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this amendment until 30 days after publication in the Federal Register (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of papayas grown in Hawaii.

In § 928.310 (Papaya Regulation 10; 44 FR 77134, 45 FR 18370, 23638, 26943, 29559) paragraph (a) is amended as follows:

§ 928.310 Papaya Regulation 10.

(a) During the period July 8 through December 31, 1980, grade and size requirements for papayas handled within the production area and for export shipments are hereby suspended.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated July 7, 1980, to become effective July 8, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-20617 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins Deferral of Effective Date of Certain Provisions

AGENCY: Rural Electrification Administration, USDA.

ACTION: Deferral of effective date—final rule

SUMMARY: REA hereby amends Bulletin 345–78, REA Specification for Carbon Arrester Assemblies for Use in Protectors, PE–78, to delay the effective date until December 31, 1980. PE–78 was originally issued with an effective date of May 2, 1980. Manufacturers were unable to meet the specification by May 2, 1980, and continue to be unable to meet the specification requirements. Therefore, it is necessary to delay the effective date in order to provide immediate relief from the nonavailability of arresters which meet the revised specification.

EFFECTIVE DATE: July 1, 1980

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1340, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3827.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). REA Specification for Carbon Arrester Assemblies for Use in Protectors, PE–78, was revised on February 4, 1980 (45 FR 9258). That revision established May 2, 1980, as the date by which all manufacturers would have to meet the revised specifications if they wished to have their products remain on the list of acceptable materials. At the time of its issuance, the May 2, 1980, date was thought to be achievable. Since that time, however, circumstances have prevented all manufacturers from complying with the May 2, 1980, date. In order to provide immediate relief from the nonavailability of listed arresters, it is necessary to defer the effective date to December 31, 1980.

The revision of PE–78 on February 4, 1980, was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order No. 12044, and was classified "not significant."

John H. Arnesen, Assistant Administrator—Telephone, has determined that an emergency situation exists which warrants publication without opportunity for public comment on this final action. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this deferral of effective date is impracticable and contrary to the public interest and good cause is found for making this deferral of effective date effective less than 30 days after publication of this document in the Federal Register.

Dated: July 1, 1980.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 80-20458 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF ENERGY

10 CFR Part 205

Administrative Procedures and Sanctions; 1980 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached as Appendix A are interpretations issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period June 16, 1980 through June 30, 1980.

Appendix B identifies those requests for interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 5E052, Washington, D.C. 20585, (202) 252–2931.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the Federal Register in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for the authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation or ruling to the extent that the interpretation is inconsistent with the amended regulation or ruling (§ 205.85(e)). The interpretations published below are not subject to administrative appeal.

Issued in Washington, D.C., July 3, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Appendix A—Interpretations

No.	To	Date	Category	File No.
1980-13	Juti Enterprises, Inc.	June 19	Price	A-500
1980-14	W. H. Price	June 19	Price	A-359
1980-15	Shell Oil Company	June 19	Price	A-353
1980-16	Crown Central Petroleum Corporation	June 19	Price and allocation.	A-477
1980-17	Hunt Oil Company	June 19	Price	A-109

Interpretation 1980-13

To: Juti Enterprises Inc.
Regulation interpreted: 10 CFR 212.54(b).
Code: GCW-PI-Stripper Well Lease Exemption; Unitization.

Facts

Since 1978, Juti Enterprises Inc. (Juti) has produced and sold crude oil from the Buckley Wilcox lease, SW NW 9-37N-4W WPM, Toole County, Montana, and therefore is a crude oil producer, subject to the price regulations set forth in 10 CFR Part 212, Subpart D. From January 1971 until March 1977, the Buckley Wilcox lease was part of the West Wilcox Moulton Sand Unit (the unit); from 1974 until the termination of the unitization agreement in 1977, the unit was certified as a stripper well property, pursuant to 10 CFR 212.54. In its present submission, Juti has asked whether the Buckley Wilcox lease is qualified as a stripper well property even though current average daily production from the Buckley Wilcox lease exceeds 10 barrels per well.

Issue

Where a unitized property was certified as a stripper well property as defined in 10 CFR 212.54(b) and the unit is subsequently terminated, may crude oil produced and sold from a component lease be certified as crude oil from a stripper well property even though crude oil production of the lease exceeds 10 barrels of average daily production per well?

Interpretation

For the reasons set forth below, the Department of Energy (DOE) has determined that crude oil produced and sold from the Buckley Wilcox lease can be certified as crude oil from a stripper well property, notwithstanding the termination of the unit of which it was a part, since that unit continues to be the relevant property under DOE regulations.

Section 212.54(b) defines a stripper well property as "a 'property' whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972." Pursuant to § 212.54, once a property has qualified for the exemption, it retains that exemption permanently, "notwithstanding any increased production above the stripper well limit in a subsequent year." 41 FR 37599 (September 7, 1976).

Subdivisions of a right to produce subsequent to 1972 do not create new properties. In such cases, the property continues to be that which existed in 1972. *E.G.,* Ruling 1975-15, 40 FR 40832 (September 4, 1975); *H. H. Weinart Estate,* Interpretation 1978-9, 43 FR 15620 (April 14, 1978). Therefore, the relevant property under DOE regulations in this case continues to be the unit of which the Buckley Wilcox lease was a part in 1972, even though that unit was terminated under State law.

Accordingly, we have determined that Juti may continue to certify and sell crude oil produced from the Buckley Wilcox lease at exempt prices since that crude oil is produced and sold from a stripper well property pursuant to 10 CFR 212.54.

Issued in Washington, D.C., on June 19, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-14

To: W.H. Price.
Regulations interpreted: 10 CFR 212.54(a), 212.131(a)(1).
Code: CGW—PI—Certification; Stripper Well Lease Exemption.

Facts

W.H. Price (Price) is the operator of the W. D. Hawthorne Lease (Hawthorne lease),[1] located in Jones County, Texas, consisting of approximately 343 acres, and is therefore a crude oil producer subject to the price regulations set forth in 10 CFR Part 212, Subpart D. In January 1974, the Hawthorne lease was certified to the first purchaser as a stripper well property. In July 1974, Compton Corporation (Compton), a reseller of crude oil, became the first purchaser of crude oil produced and sold from the Hawthorne lease, and in February 1975, the Hawthorne lease was certified to Compton as a stripper well property. In an attempt to comply with 10 CFR 212.131(a)(1)(ii), which required the certification of preexisting stripper well properties within the two-month period following September 1976, Price recertified the Hawthorne lease to Compton as a stripper well property in June 1978.

In April and August 1976, and in March 1977, various new wells on the Hawthorne lease began to produce oil.[2] However, Price apparently certified the crude oil produced and sold from these wells to Compton as being produced from a separate lease, the "W. D. Hawthorne (Gunsight)" lease, with a base production control level (BPCL) of zero, and as new crude oil eligible for upper tier ceiling prices. In fact, as Price subsequently realized, this "lease" was a part of the Hawthorne lease and property.

In June 1978, when Price recertified the Hawthorne lease to Compton as a stripper well property, Price wrote to Compton and claimed that Compton owed Price the difference between the upper tier ceiling prices that Compton has actually paid Price for crude oil produced and sold from the new well on the Hawthorne lease between September 1, 1976, and May 31, 1978, and the amounts that Price could have charged Compton for crude oil produced and sold from a stripper well property. At that time, Compton voluntarily paid the increased price retroactively for crude oil produced and sold from these wells during April and May 1978. However, Compton agreed to pay the increased price retroactively for more than two months only if Price obtained an interpretation from the Department of Energy (DOE) that such retroactive payment would not violate DOE regulations.

Price requests an interpretation that even though crude oil produced and sold from the new wells on the Hawthorne lease from September 1976 through March 1978 was certified to the purchaser, Compton, as new crude oil, 10 CFR 212.131(a)(1) does not prohibit Price from retroactively collecting the uncontrolled prices he could have charged for crude oil produced and sold from a stripper well property for that crude oil. Specifically, Price seeks assurance that Compton must now pay him the difference between the upper tier ceiling prices that Compton actually paid and the uncontrolled prices that Price could have charged Compton for crude oil produced and sold from the new wells on the Hawthorne lease in this period had Price complied with § 212.131(a)(1)(ii) and properly certified the Hawthorne lease as a stripper well property within the consecutive two-month period immediately succeeding the month of September 1976.

Issue

Does 10 CFR 212.131(a)(1) prohibit Price from retroactively obtaining the difference between the prices that Compton paid and the uncontrolled prices that could have been charged for crude oil produced and sold from the new wells on the Hawthorne lease during September 1976 through March 1978 had Price complied with that rule and properly certified the Hawthorne lease as a stripper well property within the consecutive two-month period immediately succeeding the month of September 1976?

Interpretation

For the reasons set forth below, DOE has determined that 10 CFR 212.131(a)(1) prohibits Price from retroactively obtaining the uncontrolled prices that could have been charged for crude oil produced and sold during September 1976 through March 1978 from the new wells on the Hawthorne lease

[1] Price has not requested a determination and we do not reach the question of whether or not the Hawthorne lease constitutes a "property" as that term is defined in 10 CFR 212.72 and used in 10 CFR 212.54. However, for purposes of this Interpretation we assume that Price has correctly established the entire Hawthorne lease as a single "property."

[2] Continuously since January 1974, Price has apparently sold crude oil from well No. 1 on the Hawthorne lease at uncontrolled prices, as crude oil produced and sold from a stripper well property, although neither Price nor Compton has furnished the DOE with any evidence that the certification requirements for such sales set forth in § 212.131(a)(1)(ii) were met from September 1976 to June 1978 by certifications that applied to the entire Hawthorne lease property.

had Price complied with that rule's certification requirements.

The Mandatory Petroleum Price Regulations, 10 CFR Part 212, apply to all first sales of domestic crude oil. Section 212.54(a) provides that "prices charged in the first sale of crude oil (excluding condensate recovered in non-associated production), produced and sold from any stripper well property are exempt from the provisions of this part." "Stripper well property" is defined in § 212.54(c) as "* * * a 'property' whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972."

Section 212.131(a)(1), which imposes express certification requirements on crude oil producers with respect to stripper well properties, provides in pertinent part:

With respect to each stripper well property, the producer shall certify in writing to each purchaser of crude oil produced from that property:

(i) that the property concerned has qualified as a stripper well property; and

(ii) the average daily production per well for the 12 month period during which the property qualified as a stripper well property. The certification required under this paragraph (a)(1) of this section shall be made (i) within the consecutive two-month period immediately succeeding the month of September 1976, with respect to any property which qualified as a stripper well property during or before the month of September 1976, and (ii) with respect to any property which qualifies as a stripper well property during or after the month of October 1976, within the two-month period immediately succeeding the first month that such property qualifies as a stripper well property.

Although prices charged in first sales of crude oil produced from a stripper well property are exempt from ceiling prices pursuant to § 212.54(a), § 212.131(a)(1) expressly requires a producer to make certain certifications to the first purchaser of crude oil produced and sold from a stripper well property in order to sell the purchaser crude oil produced from that property at uncontrolled prices.[3] Specifically, § 212.131(a)(1) requires a producer to certify a property as a stripper well property in writing within the consecutive two-month period immediately succeeding the month of September 1976 to each purchaser of crude oil from a property that had qualified as a stripper well property during or before September 1976.

According to the facts presented, during the consecutive two-month period immediately succeeding the month of September 1976, Price did not certify crude oil produced from the new wells on the Hawthorne lease as crude oil produced and sold from a preexisting stripper well property in accordance with the express requirements of § 212.131(a)(1). On the contrary, during this period and until June 1978, Price expressly certified to Compton that crude oil produced from these new wells was new crude oil and was not produced from a stripper well property. Therefore Price has not complied with the two-month certification requirements of § 212.131(a)(1) with respect to crude oil produced and sold from the new wells on the Hawthorne lease. Thus, § 212.131(a)(1) prohibits Price from retroactively billing Compton and obtaining uncontrolled prices for the crude oil that was produced and sold from the new wells on the Hawthorne lease during the time that it was not certified as a stripper well property, September 1976 through March 1978.

Issued in Washington, D.C., on June 19, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980–15

To: Shell Oil Company.

Regulations Interpreted: 10 CFR 212.83(c)(2)(iii), 212.83(h), 212.92.

Code: GCW—PI—Equal Application Rule; Non-Product Cost Increases; Part 212, Subpart E; Refiner Price Formula, "N" Factor.

Facts

The Shell Oil Company (Shell) is a refiner, as defined in 10 CFR 212.31, and is therefore subject to the refiner price rule of 10 CFR 212.83 in determining increased product and non-product costs. Shell sells the majority of its motor gasoline at wholesale to dealers and jobbers that resell the product. Shell is also an owner of retail sales outlets which it leases to operators for the resale of motor gasoline and, pursuant to § 324(a) of the Clean Air Act Amendments of 1977,[1] Shell is responsible for the costs of procuring and installing vapor control equipment in these retail outlets.

Shell seeks an interpretation that § 324(a) exempts the recovery of its increased costs attributable to vapor recovery equipment from the refiner price formulae, including the provisions requiring equal application of increased costs.

Issue

Does § 324(a) of the Clean Air Act Amendments exempt from any of the provisions of the refiner price formulae set forth in 10 CFR 212.83 increased costs incurred and paid by Shell for procuring and installing vapor recovery equipment?

Interpretation

For the reasons discussed below, the Department of Energy (DOE) has concluded that the Clean Air Act Amendments do not exempt Shell from any of the provisions of the refiner price formulae. In sales of motor gasoline, Shell's increased costs for procuring and installing vapor recovery equipment may be recouped pursuant to § 212.83(c)(2)(iii)(E), which does not conflict with the provisions of § 324 of the Clean Air Act Amendments. Although the recoupment of these increased costs must be made in accordance with all applicable provisions of the refiner price formulae, including the equal application rule, § 212.83(h), these provisions do not prevent Shell from fully recovering such increased costs under the non-product ("N") and marketing ("F_i") factors and insure that through the many retail purchasers of Shell's motor gasoline such costs will ultimately be borne by the general public, the intended beneficiary of the Clean Air Act.

Section 212.83(c)(2)(iii)(E) allows refiners to recover in the sales of motor gasoline increased costs attributable to the marketing of that product under the "F_i" factor, as part of the "N" (non-product) factor:[2]

"F_i" = the marketing costs increase and is the difference between the cost of marketing covered products in the month of measurement and the cost of marketing covered products in the month of May, 1973. "Cost of marketing covered products" means the costs attributable to marketing operations with respect to covered products provided that such costs are included only to the extent that they are so attributable under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned and are not included in computing May 15, 1973 prices, in computing increased product costs, or in computing other increased non-product costs.

* * * * *

A refiner shall prepare a schedule itemizing the principal costs included in marketing costs increases and describing the accounting procedures by which they are calculated. The amount of marketing costs increases which may be applied to compute maximum allowable prices for covered products is, however, limited to the extent that such marketing cost increases may:

* * * * *

(II)(aa) Allow an increase in the price of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to this part by an amount equal to increased rental costs (as defined in § 212.92), plus vapor recovery system costs (as set forth in § 212.92) plus, an amount not in excess of three cents per gallon (for marketing costs not otherwise recoverable under this subpart) with respect to all retail sales;

* * * * *

The applicable provisions of the equal application rule appear in § 212.83 and provide:

(h) *Equal application among classes of purchaser.* (1) *General rule.* Except as provided in subparagraphs (2) and (3) of this paragraph, when a firm calculates the amount of increased costs not recouped that may be added to May 15, 1973, selling prices to compute maximum allowable prices in a

[3] In *F. J. and F. Oil*, 6 FEA ¶ 83,035 at 83,168 (July 15, 1977), the Office of Exceptions and Appeals of the Federal Energy Administration (FEA), a predecessor agency to the DOE, found that even though prices charged in first sales of crude oil produced and sold from a stripper well property are exempt from the ceiling prices, the certification requirements of § 212.131 are validly imposed as a condition to a producer's first sale of crude oil from a stripper well property at uncontrolled prices.

[1] Clean Air Act Amendments of 1977, Pub. L. No. 95–95 (August 7, 1977), 42 U.S.C. § 7624 *et seq.* (1977).

[2] *See* 43 FR 60668 (December 29, 1978); 43 FR 50662 (October 30, 1978); *see generally Gulf Oil Corp.*, Interpretation 1979–7, 44 FR 29433 (May 21, 1979).

subsequent month, it shall calculate its revenues as though the greatest amount of increased costs actually added to any May 15, 1973, selling price of the product concerned and included in the price charges to any class of purchaser, had been added, in the same amount, to the May 15, 1973, selling prices of that product and included in the price charged to each class of purchaser.

(2) *Special rules.* (i) *Gasoline.* When a firm calculates the amount of increased costs not recouped that may be added to May 15, 1973, selling prices of gasoline to compute maximum allowable prices in a subsequent month, it may, notwithstanding the general rule in subparagraph (1) above, compute revenues as though (A) the greatest amount of increased costs actually added to any May 15, 1973, selling price of gasoline and included in the price charged to any class of purchaser in a particular region (as defined in § 212.82), had been added, in the same amount, to the May 15, 1973, selling prices of that product and included in the price charged to each class of purchaser in that region, and (B) the greatest amount of increased costs actually added to the May 15, 1973, selling price of gasoline and included in the price charged to any class of purchaser in any region had been added, in the same amount (less any actual differential or three cents per gallon, whichever is less) to the May 15, 1973, selling prices of that product and including in the price charged to any class of purchaser in any other region.

Section 212.92 provides:

"Vapor recovery system cost" means the unrecovered installation and purchase cost incurred by the seller since May 15, 1973 with respect to a gasoline vapor recovery system required by a Federal, state, or local governmental authority. For purposes of this paragraph, the cost incurred with respect to a vapor recovery system may be recovered in one month or may be prorated over a period of months. Each seller will be required to establish an accounting method by which vapor recovery costs shall be recovered. Once the method is established, the seller will apply the method consistently over the period for the recovery of costs. A seller may not recover in sales of gasoline a total amount attributable to such costs which exceeds the seller's actual vapor recovery system cost. In any one month, the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and shall be deemed to have been recovered on, each gallon of gasoline sold and for purposes of § 212.83(f) of this Part shall be deemed to have been recovered before all other nonproduct costs.

Thus, the Mandatory Petroleum Price Regulations allow Shell to recover all of the increased costs attributable to purchasing and installing vapor recovery systems as a marketing cost increase under the refiner price formulae, so long as those costs are deemed to be applied equally to all classes of purchaser and are recovered on each gallon of motor gasoline sold by the refiner. This result is consistent with the equal application rule, 10 CFR 212.83(h), whose purpose is generally to preserve historical differences in prices; and with the Clean Air Act, which does not specifically direct how vapor recovery system costs may be recovered.

In its request, however, Shell argues that the language of § 324 of the Clean Air Act Amendments of 1977, quoted and emphasized below, in effect exempts from limitations of the refiner price formulae, including the equal application rule, the recovery of its increased costs attributable to vapor recovery equipment installed at retail sales outlets that it owns:[3]

(a) The regulations under this Act applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined by such regulations). Except as provided in subsection (b), such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after the date of enactment of the Clean Air Act Amendments of 1977 may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, *notwithstanding any provision of law.*

(b) The regulations of the Administrator referred to in subsection (a) shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet. (Emphasis added.)

We do not agree with Shell's contention, as neither § 324 nor the published legislative history of the Clean Air Act Amendments suggests a Congressional intent to exempt Shell in any respect from the Mandatory Petroleum Price Regulations, issued pursuant to the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. No. 93-159 (November 27, 1973).[4] Section 212.83 of the Mandatory Petroleum Price Regulations permits recovery of costs for procurement and installation of vapor recovery equipment in a manner fully consistent with § 324. Under § 324 Shell has a number of options by which it can fully recover all of the costs associated with procuring and installing vapor recovery equipment at outlets owned by Shell. Shell may pass through such costs to the lessee of a retail sales outlet Shell owns if the requirements of § 324(b) are met. Shell may pass through such costs in the sale prices of any non-petroleum product or petroleum product that is not a "covered product" under the price regulations, as defined in 10 CFR 212.31. Finally, Shell may pass through such costs in the sale of covered products, such as motor gasoline, to its purchasers, including lessees of retail sales outlets that Shell owns and for which Shell has procured and installed vapor recovery equipment, subject, however, to all applicable regulations, including the incentive of 10 CFR 212.83(h) generally to apply increased costs equally to all purchasers. *See also* 10 CFR 212.83(c)(1)(i)(B); *Atlantic Richfield Co.*, Interpretation 1978-36, 43 FR 29541 (July 10, 1978); *Phillips Petroleum Co.*, Interpretation 1975-5, 42 FR 23727 (May 10, 1977).

Accordingly, we conclude that § 324(a) of the Clean Air Act Amendments does not exempt Shell in any respect from the provisions of the Mandatory Petroleum Price Regulations.

Issued in Washington, D.C., on June 19, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-16

To: Crown Petroleum Corporation.

Regulations Interpreted: 10 CFR 210.62, 211.28, 211.106, 212.31, 212.83; Ruling 1975-2.

Code: GCW—AI—PI—Class of Purchaser; Customary Price Differential; Normal Business Practices; Part 212, Subpart E; Supplier/Purchaser Relationship; Transfer of Allocation Entitlement.

Facts

Crown Central Petroleum Corporation (Crown), a refiner and marketer of petroleum products, has requested an interpretation of the Department of Energy's (DOE) Mandatory Petroleum Price and Allocation Regulations. Crown's request pertains to the maximum price of motor gasoline and the conditions under which Crown may be required under DOE regulations to supply it to the Kapsin and Dallis Realty Corporation (K&D), owner of property previously leased by Crown upon which Crown and its sublessees had maintained a Crown brand retail sales outlet.

On November 7, 1963, Crown entered into a 15-year lease with Ethel Peres (Peres lease) by which Peres leased to Crown real estate that Peres owned at 2317-27 Ralph Avenue, Kings County, New York, for Crown's use as the site for a motor gasoline retail sales outlet. Apparently, K&D became the owner of this property and succeeded Peres as lessor to Crown. Between January of 1964 and August of 1978, Crown subleased this property to a series of independent retailers of motor gasoline to whom it sold this product under franchise agreements to market Crown brand products. These agreements granted the retailers the right to purchase motor gasoline from Crown at "dealer tank wagon" (DTW) rates (the gasoline to be delivered by Crown to the dealer's retail sales outlet), and the right to display Crown's trademark logo and to use Crown's credit cards and Crown's personal property located on the premises, including tanks, pumps and lifts.

On August 29, 1978, Crown obtained a release from the last branded retailer-sublessee of this property, and from that date until the expiration of the Peres lease Crown itself operated the retail sales outlet. Upon expiration of this lease, Crown ceased all operations at the site and vacated the service station premises. At K&D's request, Crown

[3] The regulations implementing the Clean Air Act Amendments are to be issued by the Administrator of the Environmental Protection Agency. Clean Air Act, § 110 (1970), 42 USC § 7410 (1977).

[4] 15 U.S.C. § 751 et seq. (1976).

consented to supply it with motor gasoline. On March 13, 1979, DOE's Region 2 issued an order to Crown to supply K&D with the same base period volumes of motor gasoline that Crown had supplied to the retail sales outlet located on K&D's property. The order was silent on the price for the gasoline and the conditions under which Crown was to supply it to K&D.

On May 15, 1973, and since that date, Crown also sold motor gasoline to nonbranded independent retailers in the New York City area at its "posted tank car" (PTC) price, F.O.B. Crown's Inwood, Long Island, New York thru-put terminal. Crown does not provide these nonbranded independent retailers with delivery of the product or with the right to display Crown's trademark logo or to use Crown's credit cards and personal property, apparently treating such retailers as members of one class of purchaser pursuant to 10 CFR Part 212.

In its request for interpretation Crown does not contest its obligation to supply gasoline to K&D pursuant to DOE's March 13, 1979 assignment order. Crown seeks an interpretation that it may place K&D in its nonbranded-independent-retailer class of purchaser of motor gasoline, that it may charge K&D the maximum allowable price which it may charge that class of purchaser for this product, and that it need not provide K&D with any services not provided to members of that class. K&D contends that Crown must place K&D in a branded-retailer class of purchaser and charge a price for the motor gasoline which it would sell to K&D that does not exceed the maximum allowable price for this class of purchaser. K&D also contends that the normal business practices rule (10 CFR 210.62) requires Crown to make available to K&D all the services and benefits to which purchasers in this class are entitled.[1]

Issue

Must Crown place K&D in a branded-retailer class of purchaser for sales of motor gasoline and provide K&D with all of the services and benefits to which members of that class are entitled pursuant to 10 CFR Parts 210, 211 and 212?

Interpretation

For the reasons set forth below, DOE has determined that Crown may place K&D in its nonbranded-independent-retailer class of purchaser as described above and need not provide K&D with any of the services and benefits to which branded retailers may be entitled under DOE regulations. The March 13, 1979 assignment order and K&D's possible status as a successor on the site to Crown under 10 CFR 211.106 do not require a different result.

The pricing of covered products (such as motor gasoline) is governed by the Mandatory Petroleum Price Regulations contained in 10 CFR Part 212. *See* 10 CFR 211.28. These regulations provide that refiners such as Crown may charge prices for covered products that reflect their May 15, 1973 lawful selling prices and a dollar-for-dollar pass-through of the amount by which their product costs have increased since that time.[2] The general rule is stated in 10 CFR 212.83(a)(1), as follows:

A refiner may not charge to any *class of purchaser* a price for a covered product in excess of the *maximum allowable price* * * *. (Emphasis added.)

The "maximum allowable price" applicable to the product and class of purchaser concerned is defined in § 212.82 as:

* * * the *weighted average price* at which the covered product was lawfully priced in transactions with the *class of purchaser* concerned on May 15, 1973 * * * *plus increased product costs and increased non-product costs* incurred between the month of measurement and the month of May 1973* * *. (Emphasis added.)

Thus, under the Mandatory Petroleum Price Regulations, refiners compute a single weighted average price for their May 15, 1973 sales of each covered product to each "class of purchaser." This single weighted average May 15, 1973 price is a fixed component of the maximum lawful price that a refiner can charge for the sale of a particular covered product to all members of a particular class of purchaser.

"Class of purchaser" is defined in § 212.31 as follows:

"Class of purchaser" means purchasers to whom a person has charged a comparable price for comparable property or service pursuant to *customary price differentials* between those purchasers and other purchasers. (Emphasis added.)

"Customary price differential" is defined in § 212.31 as follows:

"Customary price differential" includes *a price distinction* based on a discount, allowance, add-on, premium, *and an extra based on a* difference in volume, grade, quality, or location or *type of purchaser, or a term or condition of sale or delivery.* (Emphasis added.)

The operation of the class of purchaser principle was explained in Ruling 1975-2, 40 FR 10655 (March 7, 1975), as follows:

* * * a principal function of the class of purchaser concept is to preserve the price distinctions among purchasers that customarily existed under free market conditions. To achieve the objective of making covered products available at equitable prices, FEA regulations require sellers to group together customers that are similarly situated and to compute a weighted average of their May 15, 1973 selling prices in sales to those customers. Sellers are thus required to maintain a single lawful price for a product to all customers that fall into a particular class, rather than having to establish individual maximum lawful prices to individual customers * * *.

* * * The principal function of the doctrine is to maintain the price differentials that existed on May 15, 1973 between groups of purchasers which were not similarly situated then and are not now similarly situated. *Id.* at 10656.

Ruling 1975-2 notes that the class of purchaser concept preserves the price distinctions among purchasers that customarily existed before petroleum price controls became effective. The Mandatory Petroleum Price Regulations perform this function by requiring refiners to preserve the price differentials that existed on May 15, 1973, between groups of purchasers that were not similarly situated then and are not now similarly situated. Ruling 1975-2 also notes that price differentials between prices charged to branded retailers and nonbranded retailers are "customary price differentials" which reflect differences in services and benefits afforded to these types of purchasers. *Id.* at 10659. Since product sold to branded and to nonbranded retailers is sold under different terms and conditions providing for different services and benefits, these types of purchasers must be placed in different classes of purchasers. Accordingly, Crown is required to place branded and nonbranded retailers of its motor gasoline in separate classes of purchasers and to preserve the distinctions in the maximum prices which it may charge for this product to members of these classes.

DOE's March 13, 1979 assignment order issued under the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, only requires Crown to supply motor gasoline to K&D in the volumes specified. The order does not specify the class of purchaser into which Crown may place K&D for sales of motor gasoline, stating nothing about the price or related conditions applicable to such sales under DOE regulations.

K&D argues that it is the successor on the site to the last wholesale purchaser-reseller that operated a retail sales outlet on its property pursuant to 10 CFR 211.106(e), and that K&D is therefore entitled to the same terms and conditions to which that particular wholesale purchaser-reseller was entitled. Assuming that the former wholesale purchaser-reseller at the site had a continuing right to purchase motor gasoline from Crown on a branded basis, i.e. as a member of a branded class of purchaser, K&D argues that it is entitled to purchase motor gasoline from Crown on the same basis.

Section 211.106(e) provides:

(e) *Transfer of entitlement.* Whenever a wholesale purchaser-reseller is deemed to have gone out of business in accordance with paragraph (c) of this section, the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same ongoing business on the site within a reasonable period of time, as determined by FEO, after its predecessor vacates the premises.

Section 211.106(e) does not require a refiner to sell motor gasoline to a "successor on the site" on the same basis as the former operator and wholesale purchaser-reseller of a retail sales outlet. This section provides only for the transfer of the former operator's right to an allocation of motor gasoline to the new operator. Assuming, therefore, that the former operator of the retail sales outlet on K&D's property had a continuing right to be placed in a branded-retailer class of

[1] K&D has also raised a large number of arguments that are irrelevant to this Interpretation, except as addressed herein.

[2] A further increment to some selling prices is permitted, subject to certain conditions, to reflect increased non-product costs.

purchaser, K&D would not succeed to that right under § 211.106.[3]

K&D further argues that the "normal business practices" rule contained in 10 CFR 210.62 requires Crown to place K&D in a branded class of purchaser. The Emergency Petroleum Allocation Act of 1973 (EPAA), Public Law 93–159 (November 27, 1973) [4] or the Mandatory Petroleum Price and Allocation Regulations which implement that Act, including § 210.62, do not require a supplier to continue in effect indefinitely a franchise agreement providing branded status and associated privileges to a particular purchaser. *Boron Oil Co.*, Interpretation 1975–62, 42 FR 23760 (May 10, 1977), *aff'd sub. nom. Bill's Service*, 3 FEA ¶ 80,548 (January 15, 1976); *Greenbelt Consumer Services, Inc.*, Interpretation 1974–7, 42 FR 25651 (May 18, 1977), *aff'd* 1 FEA ¶ 20,211 (December 17, 1974).[5] It follows *a fortiori* that Crown is not required by § 210.62, or any other DOE regulation, to enter into a franchise agreement with K&D, a firm that owns the site upon which Crown, and earlier its sublessees, had operated a branded retail sales outlet of motor gasoline.[6]

This conclusion is supported by the regulations as clarified in Ruling 1975–2, *supra*, which recognizes that a particular purchaser may be shifted from one class of purchaser to another without violating the Mandatory Petroleum Price and Allocation Regulations, stating that suppliers are not required to maintain certain discounts in effect on May 15, 1973, to the *same purchasers* that received them on that date but rather are required to maintain the applicable customary price differentials to the same *class of purchaser*. 42 FR at 10659. Since a purchaser's current, rather than its May 15, 1973 status or the May 15, 1973 status of a predecessor, determines its membership in a class of purchaser, the class of purchaser in which K&D must be placed is Crown's class of purchaser that is most similar to K&D in terms of the customary price differentials that presently exist.

For the reasons set forth above, we have determined that the proper application of the DOE's Mandatory Petroleum Price and Allocation Regulations to the factual situation presented in Crown's request for interpretation is as follows:

(1) Crown need not place K&D in a branded-retailer class of purchaser of motor gasoline and need not sell that product to K&D on a delivered basis at DTW rates or allow K&D to use Crown's trademark, credit cards, tanks, pumps, signs or other personal property of Crown appurtenant to the operation of a retail sales outlet for motor gasoline.

(2) Pursuant to DOE's March 13, 1979 assignment order, Crown must make available to K&D the volumes of motor gasoline specified in the order at prices and conditions applicable to Crown's most similarly situated nonbranded-independent-retailer class of purchaser in the New York City area, which existed on May 15, 1973, provided that K&D reestablishes a retail sales outlet for motor gasoline at 2317–27 Ralph Avenue, Kings County, New York.[7]

Issued in Washington, D.C. on June 19, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980–17

To: Hunt Oil Company

Regulations and Ruling Interpreted: 10 CFR 212.75, 212.79; Ruling 1977–1

Code: GCW—PI—Part 212, Subpart D; Definition of Property; Unitization; Base Production Control Level; Newly Discovered Crude Oil

Facts

Hunt Oil Company (Hunt) is a producer of crude oil that has a working interest ownership in two properties located in Andrews County, Texas. Hunt has operated the two properties since it acquired each interest pursuant to leases executed in the 1940's. The R. K. DeFord lease (DeFord) is contiguous with the J. M. White lease (White) in the Block A–34 Field. The Glorieta and the Ellenberger reservoirs each underlie both leases.

The DeFord lease consists of approximately 220 acres and lies to the north of the White lease. It currently has only one active well which produces from the Glorieta reservoir. The White lease consists of approximately 340 acres and currently has three active wells. One produces from the Ellenberger reservoir and two produce from the Glorieta reservoir. Neither lease presently qualifies as a stripper well property and both leases produced crude oil in 1972. Since September 1, 1976, each reservoir on the White lease has been treated as a separate property under 10 CFR Part 212, Subpart D.

Hunt projects that substantial amounts of additional crude oil can be produced from the Glorieta reservoir by drilling a new well on the boundary between the DeFord and the White leases. To enable Hunt to carry out this drilling proposal the royalty owners of the DeFord and White leases would execute a pooling agreement which would combine approximately 40 acres from each lease to subject the resulting 80 acres unit to a single right to produce. A Certificate of Pooling Authority would then be filed with the Railroad Commission of Texas, for a drilling permit for the 80 acre unit.

Issue

Does a drilling unit formed by the aggregation of a portion of a premises subject to a single right to produce with another portion of a premises subject to a single right to produce constitute a new unitized property with a unit base production control level (BPCL) of zero?

Interpretation

When a portion of Hunt's premises subject to a single right to produce is combined with a portion of another of Hunt's premises subject to a single right to produce, to form a drilling unit recognized by the applicable state regulatory agency, that unit is a separate property for the purposes of the Mandatory Petroleum Price Regulations. Since there was no prior production of crude oil on that unit, the BPCL for the property will be zero. However, the formation of a drilling unit by combining portions of preexisting properties must be for the bona fide reason of increasing the production of crude oil, not a means to obtain a price higher than is permitted by the regulations in violation of the prohibitions set forth in 10 CFR 210.62(c) or a practice that results in a circumvention or contravention of the requirements of any provision of 10 CFR Chapter II or any order issued pursuant thereto as set forth in 10 CFR 205.202.

The term "property" is defined in 10 CFR 212.72 in pertinent part as the "right to produce domestic crude oil, which arises from a lease or from a fee interest." Section 212.75 defines "unitized property" as "the right to produce crude oil that arises from a bona fide unitization agreement approved by the applicable governmental regulatory authority (or ERA)." The proposed pooling agreement which Hunt described in its request for interpretation falls within these definitions. The Federal Energy Administration (FEA), a predecessor agency

[3] Indeed, K&D's right to an allocation of motor gasoline from Crown under DOE's March 13, 1979 assignment order depends on its reestablishment of a retail sales outlet on its property within a reasonable period of time. *See* 10 CFR 211.11; 211.106(e); Ruling 1976–5, 41 FR 36647 (August 31, 1976); Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets, 42 FR 15459 (March 22, 1977).

[4] 15 U.S.C. 751 *et seq.* (1976).

[5] *See also Time Oil Co.*, 3 DOE ¶ 82,512 (January 18, 1979); *Cole Brothers*, 2 FEA ¶ 80,723 (November 3, 1975); *State of New Hampshire*, 2 FEA ¶ 80,574 (April 16, 1975); *Elwood J. Rokenbrodt/Interstate 90-Mississippi Gas*, 2 FEA ¶ 83,066 (March 12, 1975). While a particular termination of a franchise agreement may violate a specific provision of the Mandatory Petroleum Price and Allocation Regulations, if for example the termination constituted a "retaliatory action" proscribed by 10 CFR 210.61, we find no such violation based on the facts presented in this case.

[6] In its comments on Crown's request for interpretation K&D also asserts that in terminating the franchise agreement with the last dealer-sublessee of the retail sales outlet, Crown failed to comply with the provisions of the Petroleum Marketing Practices Act (PMPA), P.L. 95–297 (June 19, 1978). 15 U.S.C.A. § 2801 *et seq.* (West 1979). *See* "Summary of Title I of the Petroleum Marketing Practices Act," 43 FR 38743 (August 30, 1978). Whether the PMPA protections extend to unexpired franchises that are transferred or assigned depends solely upon State law. PMPA § 106(b). For this reason, the DOE cannot detemine whether Crown terminated the franchise with Crown's last dealer-sublessee at K&D's site in accordance with the PMPA or whether K&D is the beneficiary of a transfer or assignment of the franchise.

[7] This Interpretation should not be construed as addressing legal rights and obligations of K&D and Crown other than those imposed by the Mandatory Petroleum Price and Allocation Regulations, as confirming the validity of Crown's class of purchaser determinations in any respect other than as expressly set forth herein, or as sanctioning in any way the specific prices that Crown charges its classes of purchasers or individual purchasers for motor gasoline. Factual questions concerning the validity of a firm's class of purchaser determinations, or concerning specific prices charged to these classes of purchaser, can be resolved by DOE's enforcement officials after an audit of the seller's pricing records is conducted and accounting and other data are considered.

of the Department of Energy (DOE), stated in Ruling 1977–1, 42 FR 3628 (January 19, 1977):

[T]he literal meaning of the term "property," as defined by the FEA, is generally to be understood as synonomous [sic] with the physical "tract" or "premises" as to which a working interet is established by an oil or gas lease, or by a fee interest. It has also concluded that in certain instances it is permissible to segregate the interest so described for purposes of delineating an FEA "property," while in other instances the aggregation of such interests to form a single FEA "property" is appropriate.

See also L. O. Ward, Interpretation 1979–17, 44 FR 60264 (October 19, 1979) and cases cited therein.

In Part II F of Ruling 1977–1 are set forth a number of instances in which segregation, aggregation, and/or recombination of premises subject to a single right to produce would form separate properties. Among these situations are:

(2) *Segregation of Premises Subject to a Single Right to Produce.*

* * * * *

c. *Partial unitization or other aggregation of interests.* It is not uncommon for less than the total premises subject to a right to produce to be unitized or otherwise aggregated with all or portions of premises subject to other rights to produce, to form a single "property," leaving the balance of the premises formerly subject to a single right to produce not aggregated with any other such rights. The portion of the premises which is not aggregated is appropriately recognized as a property separate and apart from the portion of the premises which has been aggregated with other rights to produce.

In some cases, FEA understands that the inclusion of the so-called "Pugh" clause in a lease would operate to create a separate and distinct right to produce with respect to the non-unitized portion of the premises subject to that lease, by stating that production from the unitized portion of a lease will not serve to fulfill the lessee's production obligations with respect to the non-unitized portion. Thus, the two portions of the lease including such a clause would become separate properties by the terms of the lease itself. However, even where such a clause is not included, FEA has concluded that treatment of the nonunitized portion of the premises as a separate property is appropriate.

* * * * *

(3) *Aggregation of "Rights to Produce."* The aggregation of separate "rights to produce" pursuant to a unitization agreement was discussed in FEA Ruling 1975–15. There are, however, other circumstances under which separate rights to produce may appropriately be aggregated, pursuant to either voluntary or involuntary arrangements.

Thus, for example, various parties may hold partial undivided interests in the right to produce crude oil from a particular tract. Whether voluntarily through a joint operating agreement or other type of agreement, or pursuant to compulsory state regulations, such undivided interests in the right to produce from a tract must typically be aggregated before production can begin. Under such circumstances, no apparent, purpose would be served by requiring property delineations to be carried back to the individual partial undivided interests which have been aggregated in order to perfect the right to produce.

Another instance in which rights to produce may be aggregated occurs where the premises subject to such rights are required to be combined by a state regulatory agency as a condition to the operation of production activities. Thus, for example, in Lousiana the state regulatory agency will compel a "unit" to be formed by the owners of the tracts with respect to the surface area which overlies the portion of a reservoir that may be efficiently drained by a single well, provided the owners of at least 75 percent of the surface area agree to the formation of a unit.

Similarly, in states that maintain spacing requirements for oil wells, individual rights to produce may need to be combined, whether voluntarily or involuntarily, before a single well may be drilled and the right to produce made effective. Such aggregations of rights to produce (sometimes known as "drilling units") are also appropriately recognized as single "properties."

Generally speaking, FEA will follow a liberal policy with respect to the aggregation of rights to produce which will be permitted to be treated as a single "property," as long as a bona fide reason for the aggregation can be demonstrated by the producer.

In accordance with the foregoing, Hunt's proposal to combine approximately 40 acres each from the White lease and the DeFord lease under a pooling agreement for the purpose of drilling a new well to produce additional volumes of crude oil from the Glorieta reservoir would create a separate property from the segregated portions of the White and DeFord leases.[1] The remaining portions of each lease would each constitute separate properties. *L. O. Ward, supra.*

Because the drilling unit formed from the segregated portions of the White and DeFord leases constitutes a separate unit property, a unit BPCL must be established.

Section 212.75(b) sets forth the definition of "unit base production control level" and describes the method for its computation. This computation is based upon crude oil produced and sold from the properties that constitute the unitized property "during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all properties that constitute the unitized property."

Pursuant to these provisions, Hunt's property would have a BPCL of zero. When new properties are formed in accordance with the DOE's crude oil pricing regulations, they are treated for purposes of computing a unit BPCL "as if they had existed as separate properties since the inception of the price regulations." The BPCL of a new unit would be zero if "in 1972 there was no well on the physical premises of this property and no crude oil was produced and sold from these physical premises." *L. O. Ward, supra.* Hunt's unit property will be composed of approximately 40 acres from each of two leases. There are no wells on either 40-acre portion of the existing lease properties, and neither 40-acre portion has ever produced any crude oil. Inasmuch as none of the new 80-acre unit would have produced any crude oil during the 12-month period immediately preceding its formation, the BPCL for the new 80-acre unitized property would be zero.

For the reasons set forth above, we have determined that the proper application of the DOE's Mandatory Petroleum Price Regulations to the factual situation presented by Hunt is as follows:

(1) If the State of Texas recognizes the new drilling unit Hunt proposes to form, the aggregation of the 40-acre portions of the White and the DeFord leases would constitute a new unitized property; and

(2) The resulting 80-acre unit would have a unit BPCL of zero.

Issued in Washington, D.C., on June 19, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Appendix B—Cases Dismissed

File No.	Requester	Category	Date dismissed
A-536	Johnson Oil Company, Inc.	Price	June 19
A-483	Rothberger, Appel & Powers.	Price	June 25

[FR Doc. 80-20613 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-01-M

[1] Crude oil produced from this unitized property would not qualify for newly discovered crude oil ceiling prices pursuant to § 212.78, because both predecessor properties that existed in calendar year 1978 had crude oil production in that year. 10 CFR 212.79; 44 FR 25628 (May 2, 1979).

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

[No. 6722-01]

Description of Office, Procedures, Public Information

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Federal Financial Institutions Examination Council (the Council) is required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, to publish descriptions of its general office organization and procedures, and specific procedures dealing with information requests received from the public. At this time, the Council also sets out its policy with respect to release of information in response to compulsory process.

The Council has determined, under 5 U.S.C. 553(b)(B) and (d)(3), that good cause exists to adopt these provisions, effective immediately. This determination is based on the fact that

the Council presently operates as an agency subject to the FOIA, and, therefore, these mandated descriptions and procedures are immediately necessary for public guidance and orderly treatment of information requests. However, the Council will accept comment made to the Office of the Executive Secretary with respect to this issuance for sixty days following this publication.

EFFECTIVE DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, Washington, D.C., 20219 (202/447-0939).

DRAFTING INFORMATION: The principal drafter of this rule is David L. Giles, Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219.

Adoption of Rules: Accordingly, a new Chapter XI, Federal Financial Institutions Examination Council, is hereby established, and the Council adds a new Part 1101 of Title 12, as follows:

PART 1101—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

Sec.

Authority: 5 U.S.C. 552(a); 12 U.S.C. 3307.

§ 1101.1 Scope and purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, with respect to the Federal Financial Institutions Examination Council (Council), and establishes related information disclosure procedures.

§ 1101.2 Authority and functions.

(a) The Council was established by the Federal Financial Institutions Examination Council Act of 1978 (Act), 12 U.S.C. 3301–3308. It is composed of the Comptroller of the Currency; the Chairman of the Federal Deposit Insurance Corporation; a Governor of the Board of Governors of the Federal Reserve System; the Chairman of the Federal Home Loan Bank Board; and the Chairman of the National Credit Union Administration Board.

(b) The statutory functions of the Council are set out at 12 U.S.C. 3305. In summary, the mission of the Council is to promote consistency and progress in federal examination and supervision of financial institutions and their affiliates. The Council is empowered to prescribe uniform principles, standards, and reporting forms and systems; make recommendations in the interest of uniformity; and conduct examiner schools open to personnel of the agencies represented on the Council and employees of state financial institutions supervisory agencies.

§ 1101.3 Organization and methods of operation.

(a) Statutory requirements relating to the Council's organization are stated in 12 U.S.C. 3303.

(b) *Council staff.* Administrative support and substantive coordination for Council activities are provided by a small staff detailed on a full-time basis from the five member agencies. The Executive Secretary and Deputy Executive Secretary of the Council supervise this staff.

(c) *Agency Liaison Group, Task Forces and Legal Advisory Group.* Most staff support in the substantive areas of the Council's duties is provided by interagency task forces and the Council's Legal Advisory Group (LAG). These task forces and the LAG are responsible for securing the services, as needed, of staff experts from the five agencies; supervising research and other investigative work for the Council; and preparing reports and recommendations for the Council. The Agency Liaison Group (ALG) is responsible for the overall coordination of the respective agencies' staff contributions to Council business. The ALG, the task forces, and the LAG are each composed of Council member agency staff serving the Council on a part-time basis.

(d) *State Liaison Committee.* Under 12 U.S.C. 3306, the Council has established a State Liaison Committee, composed of five representatives of state financial institutions supervisory agencies.

(e) *Council address.* Council offices are located on the eighth floor, 490 L'Enfant Plaza East, SW, Washington, D.C. 20219.

§ 1101.4 Disclosure of information, policies, and records.

(a) *Statements of policy published in the Federal Register or available for public inspection and copying; indices.* Under 5 U.S.C. 552(a)(1), the Council publishes general rules, policies and interpretations in the Federal Register. Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the public, and an index to the same, are available for public inspection and copying at the address set out in § 1101.3(e) of this part during regular business hours. The preceding materials may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(b) *Other records of the Council available for public inspection; procedures.*—(1) *General rule and exemptions.* Under 5 U.S.C. 552(a)(3), all other records of the Council are available for public inspection and copying, except those exempted from disclosure as provided in this paragraph. Except as specifically authorized by the Council, the following records, and portions thereof, are not available to the public:

(i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive order.

(ii) A record, or portion thereof, relating solely to the internal personnel rules and practices of an agency.

(iii) A record, or portion thereof, specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(iv) A record, or portion thereof, containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(v) An intraagency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies.

(vi) A personnel, medical, or similar record, including a financial record, or any portion thereof, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Investigatory records compiled for law enforcement purposes, including investigatory records relating to a proceeding by a financial institutions regulatory agency for the issuance of a cease and desist order, or order of suspension or removal, or assessment of a civil money penalty, and the granting, withholding, or revocation of any approval, permission, or authority, but only to the extent that the production of such records would (A) interfere with enforcement proceedings; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an

unwarranted invasion of personal privacy; (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (E) disclose investigative techniques and procedures; (F) endanger the life or physical safety of law enforcement personnel.

(viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any agency directly or indirectly responsible for the regulation or supervision of financial institutions, relating to the affairs of any financial institution or affiliate thereof, financial institution holding company or subsidiary, broker, finance company, or any other person engaged, or proposing to engage, in the business of operating, managing or controlling financial institutions.

(ix) A record, or portion thereof, which contains or is related to geological and geophysical information and data, including maps, concerning wells.

(2) *Waiver of exemption.* Notwithstanding the applicability of an exemption, the Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance whatsoever.

(3) *Procedure for records request.*—(i) *Initial request.* Requests for records shall be submitted in writing to the Executive Secretary of the Council, at the address set out in § 1101.3(e) of this part. Mailed requests should be marked "Freedom of Information Request," "FOIA Request," or the like on the envelope. Requests must reasonably describe the records sought. The Executive Secretary will aid members of the public in formulating their requests. All requests should give the complete telephone number of the individual seeking the records, if possible.

(ii) *Council response to initial requests.* The Executive Secretary will respond by mail to all properly submitted initial requests within 10 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requesting party and the Executive Secretary.

(iii) *Appeals of responses to initial requests.* If a request is denied in whole or in part, the individual making the request may appeal in writing, within 35 days of the date of the denial, to the Chairman of the Council, at the address set out in § 1101.3(e) of this part. Mailed requests should be marked "Freedom of Information Appeal," "FOIA Appeal," or the like on the envelope. Appeals should refer to the date of the original request and the date of the Council's initial ruling. Appeals should include an explanation of the basis for the appeal.

(iv) *Council response to appeals.* The Chairman of the Council, or another member designated by the Chairman, will respond by mail to all properly submitted appeals within 20 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requesting party and the Chairman or the Chairman's designee.

(4) *Procedure for access to records if request is granted.* When a request for access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requesting party or made available for inspection, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their use by the Council and other users of the records.

(5) *Fees.* A person requesting access to records or copies of records shall pay the cost of searching for or copying records at the rate of $10 per hour for personnel time and 10 cents per page for copies delivered to the requesting party. Unless the requesting party states in the initial request that all costs will be paid regardless of amount, the requesting party shall be notified as soon as possible if there is reason to believe that the cost of obtaining access plus the cost of copies (if requested) will exceed $50. The Executive Secretary may require that requesting party's written agreement to pay such costs and a cash deposit based on such costs, or advance payment of the full amount of anticipated costs. Applicable time limits will be suspended until the receipt of the written agreement and the deposit amount, or the full advance payment, as appropriate. The Executive Secretary, or the Council, in their sole discretion, may waive fees totaling less than $10, or fees imposing hardship on the requesting party, or fees for requests demonstrated by the requesting party to be in the public interest.

(6) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the Council will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

§ 1101.5 Testimony and production of documents in response to subpoena, order, etc.

No person shall testify, in court or otherwise, as a result of activities on behalf of the Council without prior written authorization from the Council. This section shall not restrict the authority of a Council member to testify before Congress on matters within his or her official responsibilities as a Council member. No person shall furnish documents reflecting information of the Council in compliance with a subpoena, order, or otherwise, without prior written authorization from the Council. The Council may authorize testimony or production of documents after the litigant (or the litigant's attorney) submits an affidavit to the Council setting forth the interest of the litigant and the testimony or documents desired. Authorization to testify or produce documents is limited to authority expressly granted by the Council. When the Council has not authorized testimony or production of documents, the individual to whom the subpoena or order has been directed will appear in court and respectfully state that he or she is unable to comply further with the subpoena or order by reason of this section.

Dated: July 7, 1980.

Robert J. Lawrence,

Executive Secretary.

[FR Doc. 80-20620 Filed 7-10-80; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Revision 13, Amdt. 36]

Small Business Size Standards; Small Procurement Purchases Under $10,000 (Public Law 95-507)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On January 15, 1980, SBA published an amendment in the Federal Register (45 FR 2840) which allows small nonmanufacturers to supply any domestically produced product on procurements with an anticipated value

of less than $10,000 and subject to small purchase procedures. There has been confusion as to the meaning of the word "reserved" within the context of paragraph 121.3-8(c) of the Small Business Rules and Regulations. this amendment is intended to clarify the regulation by making the word "reserved" synonymous with "set aside" within the context of 13 CFR Part 121.

DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: John D. Whitmore, Jr. (202) 653-6373.

SUPPLEMENTAL INFORMATION: Accordingly, pursuant to authority contained in § 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, Schedule D of Part 121, Chapter I of Title 13, Code of Federal Regulations is amended by revising paragraphs (c) (2) and (3) and adding a new (4) to read as follows:

§ 121.3-8 Definition of small business for Government procurements.

* * * * *

(c) * * *

(2)(i) In the case of Government procurement reserved (i.e., set aside) for or involving the preferential treatment of small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer, which products are manufactured or produced in the United States: Provided, however, if the goods to be furnished are woolen, worsted, knitwear, duck, and webbing, dealers and converters shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear), and, if finishing is required, by a small finisher. If the procurement is for thread, dealers and converters shall furnish such products which have been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specifications but excluding mercerizing, spinning; throwing, or twisting operations.")

(ii) If the procurement is for a refined petroleum product, other than a product classified in Standard Industrial Classification Industries No. 2951, *Paving Mixtures and Blocks;* No. 2952, *Asphalt Felts and Coatings;* No 2992, *Lubricating Oils and Greases;* or No. 2999, *Products of Petroleum and Coal, Not Elsewhere Classified;* paragraph (g) of this section is for application. For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional administrator or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc. The Government often purchases items in the form of kits such as, but not limited to, tool kits and survival kits which are not manufactured items but merely assemblages of separate manufactured items. Accordingly, a concern which purchases some or all of such items and packages them into kit form is considered to be a nonmanufacturer for size determination purposes. Such a concern can qualify as a small business only if it meets all other qualifications of a small nonmanufacturer set forth in this part and, if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business, For the purpose of a size determination, a sawmill is considered as the manufacturer of treated lumber, even if it contracts out the treatment of the lumber. therefore, a small business sawmill can deliver, in the performance of a set-aside procurement, lumber which has been treated by a concern which does not qualify as a small business concern. for the purpose of a size determination, a concern which converts liquid oxygen to gaseous oxygen, with or without additives, is a nonmanufacturer of the gaseous oxygen and, therefore, must furnish gaseous oxygen converted from liquid oxygen manufactured by a small business concern.

(3) A regular dealer, otherwise qualified on an unrestricted procurement, supplying the product of a large business, and requiring a Certificate of Competency, is deemed to be small if it is independently owned and operated and it alone would enjoy a profit or suffer a loss from the contract.

(4) Notwithstanding the provisions of (2), above, in the case of Government procurement reserved (i.e., set aside) for small business; if the procurement has an anticipated value of less than $10,000 and is subject to, and is actually processed under "small purchase procedures" as defined in the Federal Acquisition Regulation or, pending issuance thereof by the Office of Federal Procurement Policy, in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product.

* * * * *

Dated: July 3, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-20521 Filed 7-10-80; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Economic Regulations Amendment No. 25 to Part 207, Docket: 35392, Regulation ER-1182]

Charter Trips and Special Services; Unused Space

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the section on unused space in its charter rule. This action is taken in response to a comment from Spantax, to allow airlines to utilize unused space on charters for their employees, promoters of air transportation, barterers, and others.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: A full discussion of this action is in ER-1181, adopted today.

Since this action is interpretative in nature and relieves a restriction, the Board finds that notice and public procedure are unnecessary and that it may become effective immediately.

§ 207.12 [Reserved].

Accordingly, the Board revokes and reserves § 207.12.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373 and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20783 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 208

[Economic Regulations Amendment No. 25 to Part 208, Docket 35392, Regulation ER-1183]

Terms, Conditions, and Limitations of Certificates To Engage in Charter Air Transportation; Unused Space

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the section on unused space in its charter rule. This action is taken in response to a comment from Spantax, to allow airlines to utilize unused space on charters for their employees, promoters of air transportation, barterers, and others.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: A full discussion of this action is in ER-1181, adopted today.

Since this action is interpretative in nature and relieves a restriction, the Board finds that notice and public procedure are unnecessary and that it may become effective immediately.

§ 208.7 [Reserved]

Accordingly, the Board revokes and reserves § 208.7.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373 and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20784 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 212

[Economic Regulations; Amendment No. 35 to Part 212, Docket 35392, Regulation ER-1184]

Charter Trips by Foreign Air Carriers; Unused Space

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the section on unused space in its charter rule. This action is taken in response to a comment from Spantax, to allow airlines to utilize unused space on charters for their employees, promoters of air transportation, barterers, and others.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: A full discussion of this action is in ER-1181, adopted today.

Since this action is interpretative in nature and relieves a restriction, the Board finds that notice and public procedure are unnecessary and that it may become effective immediately.

§ 212.9 [Reserved]

Accordingly, the Board revokes and reserves §212.9.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373 and 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20785 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 214

[Economic Regulations Amendment No. 31 to Part 214, Docket 35392, Regulation 1185]

Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only; Unused Space

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the section on unused space in its charter rule. This action is taken in response to a comment from Spantax, to allow airlines to utilize unused space on charters for their employees, promoters of air transportation, barterers, and others.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

A full discussion of this action is in ER-1181, adopted today.

Since this action is interpretative in nature and relieves a restriction, the Board finds that notice and public procedure are unnecessary and that it may become effective immediately.

§ 214.8 [Reserved]

Accordingly, the Board revokes and reserves § 214.8.

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373 and 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20786 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 223

[Economic Regulations Amendment No. 9 to Part 223, Docket 35392; Regulation ER-1181]

Free and Reduced-Rate Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB permits airlines to provide unrestricted free or reduced-rate air travel to persons involved in promoting air transportation or as part of a barter transaction. This action is taken in response to petitions from the Air Freight Association of America and the Society of American Travel Writers.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; 202-673-5442; or Tom Moore, Bureau of Domestic Aviation; 202-673-5038.

SUPPLEMENTARY INFORMATION:

In response to petitions for rulemaking from the Air Freight Forwarders Association (now the Air Freight Association of America) and the Society of American Travel Writers, the Board issued EDR-391, 44 FR 64429, November 7, 1979. In that notice, the Board proposed to exempt air carriers from sections 403 and 404 of the Act to enable them to offer free or reduced-rate air transportation to promoters of air travel without having to file tariffs, as is required for discounts offered to the general public. Under that proposal, an air carrier would be able to offer free or reduced-rate transportation to all persons engaged in the promotion of air transportation and their immediate families when such transportation was undertaken for a promotional purpose. Previously, under 14 CFR Part 223, such an offer could be made only to carrier employees, travel agents and a few other limited classes of individuals.

EDR-391 also proposed exemptions from sections 403 and 404 of the Act to permit carriers to barter or trade the right to air transportation for goods and services. Previously, local service carriers had been permitted to barter under 14 CFR Part 225, but only a strict value-for-value basis. Temporary exemptions had also been granted to some other carriers to permit them to engage in barter transactions. EDR-391 proposed to eliminate Part 225 and amended 14 CFR Part 223. Under this proposal all carriers would be allowed to barter on an unrestricted basis. For reasons discussed below, we have decided that the proposed rule is in the public interest, and are adopting it as proposed.

The Comments

The Board received more than 50 comments on this proposal, most of them favorable.* Among those opposed, several airlines were concerned about being pressured into providing reduced-rate air travel. Aloha Airlines was concerned about pressure from fuel suppliers. Others stated that competitive pressures in general would force them to offer more than a desirable amount of free or reduced-rate transportation.

Eastern Airlines, Lufthansa German Airlines, USAir and the American Society of Travel Agents (ASTA) opposed the rule because, in their view, permitting free or reduced-rate transportation would adversely affect the prices other consumers pay. Eastern and USAir claimed that allowing free or reduced-rate transportation as proposed would result in a "discriminatory" pricing system, in the sense that it would result in different treatment for similarly situated passengers. John Barnes of Dalton, Georgia also claimed that such a rule would benefit only "fat cats" and "vested interests," who would be able to use their influence to pressure carriers into granting them lower rates, while the general public made up the difference with higher fares. The International Airforwarder and Agents Association (IAAA) was concerned that discrimination would occur in international markets because of the absence of competition there.

Trans World Airlines (TWA) stated that a reduced rate might, especially in barter transactions, take the form of illegal rebates. To overcome this problem, TWA suggested that the rule include accounting or valuation requirements such as those in 14 CFR Part 225, which we proposed to revoke in EDR-391. Valuation requirements would, in TWA's view, help to ensure that goods or services bartered were equal in value to the air transportation provided and would eliminate the potential for illegal rebates.

USAir argued for implementation on a phased or experimental basis. In USAir's view, that would be more consistent with the Board's aim of effecting a smooth transition to complete deregulation.

Among the supporting comments, the International Association of Trade Exchanges (IATE), representing 200 members of the trade exchange industry, emphasized the advantages of allowing airlines to barter for their services: increased utilization of aircraft capacity with consequent improvement in efficiency; flexibility in marketing and contracting that will yield economic benefits to the parties and to the public; improving carrier cash flow by making it unnecessary to pay cash for a wide variety of goods and services they need. The IATE also commended the proposal in leaving the parties free to reach their own terms on the value of the consideration on either side, as important to efficient management. Other supporting comments emphasized these same points in respect to barter.

Many media commenters pointed out the importance of barter to small communities, and to the smaller airlines that often serve them. They pointed out that insufficient traffic generation is usually the problem where airlines discontinue service, and this is caused in part because they cannot afford to buy space in the various media serving these communities. Unrestricted barter allows the airlines to advertise without greatly affecting their cash flow, to the benefit of all sides. Other advantages noted in the supporting comments were bringing U.S. practices into line with those of foreign countries, thus reducing carrier administrative burdens, and placing U.S. forwarders on an equal competitive footing with their European counterparts (as to both barter and promotional travel).

The promotional transportation proposal was also supported by a variety of commenters, including business, governmental, and commercial travel services, freight forwarders and agents, and airlines. They noted that promotional transportation is an important competitive tool for airlines and intermediaries who deal with them. Various groups, such as corporate travel departments, urged that they be included in the ambit of permissible promotional transportation, which previously has been limited to travel agents. Fifty-one government tourist offices cited the benefits of extending promotional travel to them: increased knowledge that would enable them to better serve the public, and enable them to plan multi-stop trips where they have been up to now at a disadvantage vis-a-vis commercial services.

We have concluded, upon review of all available information and arguments, that the proposal is sound. We cannot, of course, predict how widespread the offering of promotional and bartered transportation will become with the removal of most regulatory restrictions. There appear to be a variety of situations, however, where these practices offer an attractive and efficient way of exchanging goods and services, and the possible disadvantages set forth in the opposing comments have not impressed us as significant. Under the mandate of the Airline Deregulation Act to "return the air transportation industry to our free enterprise system," (S. Rept. No. 95-631, 95th Cong., 2d. Sess., p. 4) we are inclined to allow such innovations that free the hand of managements to maximize efficiency and promote operations most effectively.

We are especially impressed with the possibilities of barter in promoting air service in smaller communities, by allowing airlines to exchange travel for advertising in local media. That is not new, of course. We have granted numerous exemptions to allow it, have allowed local service carriers by rule to barter on a more restricted basis, and have placed no restrictions on air taxis in this area. Allowing any airlines to barter should provide for more organized bartering activity, and

* Supporting comments: Hawaii Air Cargo, Barter Systems, Inc., Universal Air Freight, NACA, International Association of Trade Exchanges, National Customs Brokers & Forwarders Association of America, Virgin Islands, Air BVI, Housatonic Vally Broadcasting Co. & Northwest Conn. Broadcasting Corp., Lineas Aereas Paraguayas, MD-DC-Del Broadcasters Association, National Passenger Traffic Association, The Smaller Market UHF Television Station Group, South Jersey Radios Inc., Spantax, S.A., Travel Smart, ITT Electronic Travel Services, Inc., Media Associates, Aero Uruguay, S.A., Aspen Airways, Air Freight Association of America, British Airways, Home News Publishing Co., KSLA-TV, Lufthansa German Airlines, Pan Am, Southwest Airlines, International Airforwarder & Agents Association, So Minn Broadcasting Co. & Antares Broadcasting Co., Buffalo Broadcasting Company, Inc., Communications House, Commonwealth of Virginia, Convention and Conference Consultants, CSI Media Associates, Inc., Exchange Enterprises, 51 Government Tourist Offices, Government du Quebec, Government of Puerto Rico, International Federation of Women's Travel Organizations, North Atlantic Freight Forwarders, Royal Globe Travel, SCAC Transport, Inc., Unlimited Business Exchange, G. William Whitehurst, Mrs. Lindy Boggs, TWA, Flying Tiger Line, Frontier Airlines, Meeting Planners International, New Orleans Tourist & Convention Commission, International School of Travel.

Opposing comments: John Barnes, ASTA, Eastern Air Lines, Lufthansa German Airlines, USAir, Aloha Airlines.

broaden benefits to smaller communities. Removal of valuation restrictions should facilitate the process.

Free and reduced-rate promotional transportation has been fairly widely allowed among travel agents, and the impact, therefore, of removing most of the existing restrictions should be less than it is with respect to barter. Here the main benefits will probably be to remove inequities caused by limiting the activity to a particular segment of the industry—travel agents—along with freeing airline management to decide exactly how much promotional transportation is beneficial to their operations.

We do not expect carriers to be pressured into providing free or reduced-rate transportation to a destructive degree. Carriers are not likely to engage in irrational conduct and offer reduced rates without countervailing benefits to themselves. The argument that they would is contradictory of the most fundamental premise of deregulation: that business managers, as a whole, will arrive at the best level of prices and services offered if left to compete in the marketplace without the restrictions or "protections" of government regulation. Other industries have been free, subject to the antitrust laws, to exchange their goods or services for those of others without having their economic viability undermined. Within the airline industry, air taxis as a group have been exempted from section 403 by § 298.11 for many years. This has enabled them to offer free or reduced-rate transportation and to barter, and we have no indication that this has been a problem for them. Aspen Airways, which operates as a commuter on many of its routes, commented in favor of the proposal.

Essentially the same answer applies to the arguments that allowing bartering or reduced-rate transportation for promotional purposes will result in higher fares. These assumptions apparently rest on the flawed premise that transportation furnished by an airline as part of a bartering transaction, or as part of a promotional program, constitutes an *extra* cost, which must be made up for in higher fares. We see no reason to accept this premise as a general matter. The whole idea of bartering is that the carrier does receive real value for the transportation furnished, and as noted above, we have no good reason to think that carrier management is not fully capable of placing an appropriate value on what it receives. Actually, bartering may lower carrier unit costs, since (1) rational managers do not voluntarily undertake loss transactions, and all the transactions with which this rulemaking is concerned are voluntary, and (2) the freedom to barter creates a flexible new marketing tool—a development that typically leads to greater efficiency.

Promotional free and reduced-rate transportation is subject to the same analysis. Promotional travel is really an extension of the concept of barter, since carriers, presumed rational, would not offer it unless they expected to receive ample value in return. The only difference is that promotional travel by itself does not represent a bargained-for exchange.

There are several sufficient answers to the argument that these newly permitted transactions will be discriminatory. The Board no longer considers fare discrimination among passengers to be a problem, except in narrowly-defined cases that meet several tests, one of which is that the discrimination would result in long-term economic injury other than the difference in fare itself. PS-93, 45 FR 36058, May 29, 1980. It is difficult to see how the result would be discrimination in any meaningful sense, since as discussed above, the general fare level is not likely to be increased as a result of these transactions. Furthermore, the persons receiving the transportation will either be in a special commercial relationship to the carriers, with the transportation basically compensatory for services expected, or their transportation will be paid for by an exchange of goods or services. Finally, to remove any doubt about a violation of section 404(b), we are retaining the exemption from that section in this rule as originally proposed.

TWA's argument that the proposed rule would cause illegal rebating is really conclusory, and not a separate issue. Technically, we are exempting carriers in this action (§§ 223.2(k) and 223.3(1)) from the tariff requirement of section 403 for bartered and promotional travel, so that the rebating provisions will not apply. More substantively, allowing carriers to judge for themselves the value of goods or services they receive in return for air transportation, without second-guessing by the government, is in line with our movement toward allowing carriers to price their services at their own discretion, especially where downward flexibility is the issue. Illegal rebating could still be found where a carrier was clearly not adhering to its tariff in a case where the tariff applied, as for example where the carrier gave out to the public discount or free-travel coupons without corresponding tariff provisions.

We do not agree that the action taken here is inconsistent with a gradual transition to deregulation. This rule represents another step leading to the eventual elimination of section 403 at the end of 1982. Limited exemptions from that section now exist, allowing free or reduced-rate transportation and barter. Part 223 already contains an exemption to allow carriers to provide free or reduced-rate transportation to travel agents on familiarization tours. We have issued several exemptions to individual carriers to permit them to engage in barter. The fringe benefits of free transportation now offered airline employees is in-kind compensation for personal services. IATA Resolutions 203a and 203c and ATC Resolution 15.35 now allow barter in some circumstances. Today we are merely broadening the circumstances and the class of individuals eligible to benefit from these programs without compelling carriers to take any action against their will.

Eligibility for Free or Reduced-Rate Transportation

Several commenters requested clarification of who qualifies as a promoter of air transportation so as to be eligible for free or reduced rates. ITT Electronic Travel Services, Inc., Air Freight Association of America (AFA), Meeting Planners International, International School of Travel, National Passenger Traffic Association (NPTA), and several media representatives and government tourist offices sought assurances that their members or employees would be eligible for free or reduced-rate transportation under this rule. AFA also asked that the Board make clear that employees of an industry organization may receive free or reduced-rate transportation from a carrier even if that carrier is not a member of the organization.

We see no need to specifically authorize free or reduced-rate transportation for any group. These are decisions best left to carrier discretion. To issue a policy statement listing those who qualify as promoters of air transportation, as AFA requested, is not necessary and is apt to lead to a deluge of petitions from other groups seeking inclusion on the list. The broad "promotional" criterion is not a significant limitation on the classes of persons who could be eligible for free or reduced-rates under this rule. It is meant to distinguish promotional transportation from unrestricted travel. Any promotional organization is free to receive such benefits from a carrier if the carrier is willing to offer them.

Several comments raised the question whether promotional free or reduced-rate transportation should be available to government officials. Pan American asked that they be excluded from eligibility from such transportation, on grounds that carriers operating in foreign countries are "virtually powerless to deny free or reduced-rate transportation to these officials, and their immediate families, if the Board does not expressly exclude this category of travel" from the proposed amendment. The governments of the U.S., Virgin Islands and Puerto Rico filed comments opposing the Pan American position, noting that the Board routinely grants exemptions for carriage of foreign government officials, thus putting their tourist offices at unfair disadvantage in seeking to promote their areas as travel destinations.

The existing regulation, in 14 CFR 223.2(b)(3), specifically allows carriers to provide free or reduced-rate transportation to any "persons to whom such carrier is required to furnish free or reduced-rate transportation by law or government directive or by a contract or agreement, now or hereafter in effect, between such carrier and the government of any country served by such carrier." Even aside from that provision, carriers are free at present to request exemptions from the Board to carry government officials on an ad hoc basis, and they are routinely granted. Thus, the carrying of government officials at free or reduced rates is now a widespread practice. The issue was not raised in the notice of proposed rulemaking, and we do not feel justified in excluding government officials, without further notice and opportunity for comment, from the rule we are issuing herewith. We will therefore by this amendment allow government officials "engaged in promoting transportation", along with others similarly engaged, to receive free or reduced-rate transportation for promotional trips as the carriers see fit to provide it. We are also, however, considering issuing a proposed amendment to alter this practice, as Pan American suggested.

The American Society of Travel Agents (ASTA) sought to exclude employees of corporate travel departments from eligibility under this rule. NPTA, however, on behalf of business travel departments, claimed that corporate travel departments provide valuable and costly reservation and ticketing services for airlines and should both qualify as promoters of air transportation and be able to barter these services for free or reduced-rate air transportation. ASTA objected that the eligibility of corporate travel departments for free or reduced-rate air transportation is at issue in the *Investigation into the Competitive Marketing of Air Transportation,* Docket 36595. To decide that issue here would, in ASTA's view, prejudge the issues in the *Competitive Marketing* case.

For the same reasons that we do not believe it necessary to publish a list of those organizations that do qualify for free or reduced-rate promotional transportation, we also see no need to specify who does not qualify. The carriers themselves are clearly in the best position to decide not only who promotes air travel but also to whom they wish to grant reduced-rate benefits. Similarly, we do not need to decide whether business travel departments in fact provide services to the airlines and, if they do, whether the carriers should undertake to barter in exchange for those services.

With respect to the alleged overlap of issues with the *Competitive Marketing Investigation,* it is important to keep in mind exactly what the effect of this rule will be. We have decided that carriers *may* give reduced-rate benefits to those organizations that promote travel and *may* barter with others for goods and services. We have *not* decided that any carrier *must* extend these benefits to anyone. At issue in the *Competitive Marketing Investigation* are various intercarrier agreements, some of which may well forbid the activities covered by this rule. In particular, it is likely that ATC Resolution 90.1, Section IX A and, if approved, ATC Resolution 90.3, Section I and XXI A, would prohibit carriers from granting reduced rate benefits to and bartering with business travel departments. We do not propose to decide by this rule whether those agreements should continue to receive approval and antitrust immunity. That question is clearly at issue in the Investigation and will be decided there.

To the extent that reduced-rate benefits and bartering with business travel departments were formerly prohibited, this rule may alter the *status quo* by permitting activities that the intercarrier agreements did not need to address because of their illegality. If that proves to be the case, we will not oppose any attempts by the carrier to clarify the intended scope of the agreements pending the final outcome of the *Competitive Marketing Investigation.*

Several commenters requested clarification of the last clause in § 223.2(l), which limits the availability of free or reduced-rate transportation to situations where "such transportation is undertaken for a promotional purpose." Some commenters were concerned that this may be too strict a limitation on the availability of reduced rates, while others stated that the phrase was too vague and thereby opened the door to abuses. AFA sought assurance that free or reduced-rate transportation would be available for promoters of air transportation even if the promotional activity preceded the travel and regardless of the reason the particular trip was undertaken.

The free and reduced-rate transportation provision, unlike the broadly comprehensive barter provision, is directed toward a specific purpose. It is a recognition of the fact that, beyond the exchange of travel for services performed, the airline industry finds it in its economic interest to have travel agents and other transportation-related professionals take trips that will put them in a better position to sell the product. This provision is not intended to permit general beneficences to the travel industry, such as "passes" that may be used for any purpose. Because the tariff system still exists, the Board is not prepared at this time to allow unrestricted *ad hoc* discounting, without regard to purpose of the travel.

This restriction should be distinguished from the liberal barter provisions, however. Travel *in return for* goods or services, regardless of the timing of the exchange, is permitted. Thus, the assurance sought by AFA appears to be unnecessary, since travel in return for "promotional activity" constitutes a valid barter under § 223.2(k), even if the promotional activity occurs first and the travel bartered for is non-promotional.

We think the potential harm from possible abuse of these newly liberalized provisions is small, and greatly outweighed by the benefits. The goods or services bartered for must, of course, be other than airline business itself; the furnishing of travel in return for the purchasing of travel would be a rebate prohibited by section 403. Unfair practices generally can be dealt with under section 411 of the Act.

Other Issues

Flying Tiger Line (FTL), an all-cargo carrier, claimed that this rule would place it at a competitive disadvantage against combination carriers, those who carry both passengers and cargo. FTL was concerned that combination carriers may offer transportation privileges under this rule to employees of air freight forwarders and other cargo transportation promoters that FTL, as an all-cargo carrier, would be unable to match. It asked to be allowed to respond

to this by buying tickets from passenger carriers and transferring those tickets to forwarders or other promoters free or below cost. It also asked that it be allowed to pay the promoters for their services in cash rather than by offering them air transportation.

We do not consider it incumbent on us to ensure that every carrier is on an equal-competitive footing with all others. FTL is free to seek authority to carry passengers. Transferring or bartering tickets bought from a passenger carrier, however, is now prohibited by Rule 100(d) in CAB Tariff No. 352, to which most carriers subscribe. This rule is being reconsidered in another proceeding as part of our general review of tariffs.

As for FTL's second request, paying forwarders for their service in cash, this is already permitted to a large extent. Domestic cargo transportation has been deregulated and tariffs have been eliminated. Thus payments to domestic air freight forwarders would not be prohibited. In the international area, such payments would be illegal rebates if they were made in return for furnishing air transportation services. To the extent that the service in question is a non-air transportation service, however, a payment by the direct carrier for it is permitted. See PS-86, 44 FR 456088, August 3, 1979 for a discussion of non-air transportation services.

Southwest Airlines asked that carriers be allowed to provide air transportation as contributions to charities and in return for settlement of legal claims against them. These practices are already permitted by Orders 78-12-49 and 80-2-155.

Several commenters asked us to amend our rules so that bartered-for air transportation could be resold. Reselling the right to air transportation may make one an indirect air carrier, requiring certification from the Board. The Board will give further consideration to the question whether to allow the unrestricted transfer of bartered-for air transportation, which could have effects related to the marketing of air transportation generally.

The National Air Carrier Association sought assurances that this rule would be applicable to all classes of carriers, and in particular to charters. Spantax asked that a paragraph be added to each of our charter rules to permit direct carriers and charter operators to utilize unused space for the carriage of those traveling at free or reduced rates under §§ 223.2(k) and 223.2(l).

Carriers are free to barter the right to both scheduled and charter air transportation and offer free or reduced rates on each. We do not consider it necessary to amend the charter rules as Spantax suggested. With the elimination of charter tariffs by ER-1125, 44 FR 33056, June 8, 1979, the sections on unused space in Parts 207, 208, 212, and 214 are no longer necessary. By separate notices therefore, we are revoking them. This will allow the direct carrier to utilize unused space for promoters or barterers when the charterer agrees to that arrangment.

When the Public Charter rule (14 CFR Part 380) was adopted to replace the Advance Booking Charter and several other charter types, it did not have the "same service, same price" provision of the old rules. At that time, however, a free and reduced-rate provision was included in the Public Charter rule (§ 380.16), to ensure that reduced rates for travel agents would not be considered in violation of section 404(b), prohibiting unjust discrimination. In light of the exemption of charter operators from any tariff filing requirement, the Board's recently restated position on what constitutes unjust price discrimination (PS-93, 45 FR 36058, May 29, 1980), and the general exemption from section 404(b) adopted here for the purpose of allowing barter and reduced-rate promotional transportation, § 380.16 is no longer necessary, and is hereby revoked. We are also revoking the definition of "travel agent" in § 380.2, which was included only to define those eligible for free and reduced rates under § 380.16. The effect of these revocations is to make it clear that space aboard chartered aircraft may be sold at any price, or furnished free, by either the direct carrier or the charterer.

Because this rule relieves restrictions, the Board finds that it may become effective immediately. We will continue to monitor carrier practices under this rule and take action if any abuses or inequities result.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 223, *Free and Reduced-Rate Transpoprtation*, by adding new paragraphs (k) and (l) to § 223.2, to read:

§ 223.2 Persons to whom free and reduced-rate transportation may be furnished.

* * * * *

(k) Carriers are exempted from sections 403 and 404(b) of the Act and Part 221 of this chapter to the extent necessary to provide transportation (including free and reduced-rate transportation) in return for goods or services.

(l) Carriers are exempted from sections 403 and 404(b) of the Act and Part 221 of this chapter to the extent necessary to provide free or reduced-rate transportation to persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose.

(Secs. 204, 403, 404 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373, 1374 and 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20782 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 380

[Special Regulations Amendment No. 11 to Part 380, Docket 35392; Regulation SPR-171]

Public Charters; Free and Reduced-Rate Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates the section on free and reduced-rate transportation in the Public Charter rule to allow charter operators to offer such rates without limitation. This action is taken at the CAB's own initiative.

DATES: Adopted: July 2, 1980. Effective: July 2, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

A full discussion of this action is in ER-1181, adopted today. The waiver that allowed travel agents to receive free and reduced rates on Public Charters expired on May 29, 1980. The Board finds it in the public interest to allow charterers freedom to use free and reduced-rates for promotional and other business purposes as soon as possible, so that notice and public procedure are unnecessary and contrary to the public interest, and there is good cause for an immediate effective date.

§ 380.2 [Amended]

§ 380.16 [Amended]

§ 380.50 [Amended]

Accordingly, in 14 CFR Part 380, *Public Charters*, the Board eliminates the definition of "travel agent" in § 380.2, and revokes and reserves § 380.16, and paragraph (c) of § 380.50.

(Secs. 204, 403, 404 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat.

743, 758, 760, 92 Stat. 1731, 1732, 49 U.S.C. 1324, 1373, 1374 and 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20774 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 386

Change in Value Requirements for Filing of Shipper's Export Declaration

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule is issued to conform to the *Export Administration Regulations* governing the filing of Shipper's Export Declarations with the Bureau of Census' *Foreign Trade Statistics Regulations.* A final rule issued by the Bureau of the Census and published in the Federal Register on July 3, 1979 (44 FR 38832), raised the upper limit of the exemption from Shipper's Export Declaration filing requirements from $250.00 to $500.00. This amendment will lessen the burden of export documentation on the public by eliminating Shipper's Export Declaration filing requirements for more than one million shipments per year. The change will also reduce the number of Shipper's Export Declarations that are handled by Customs and processed by Census for statistical purposes.

EFFECTIVE DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Washington, D.C. 20230, Telephone: (202) 377-5247 or 377-4811.

SUPPLEMENTARY INFORMATION: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978) "Improving Government Regulations." Therefore these regulations are issued in final form.

Accordingly, Part 386 of the *Export Administration Regulations* (15 CFR Part 368 *et seq.*) is amended as follows:

1. In § 386.1 paragraphs (b)(2)(i) and (c)(2)(i) are revised to read:

§ 386.1 General export clearance requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Declaration required.* Unless otherwise set forth specifically by the *Export Administration Regulations* or by the Bureau of Census' *Foreign Trade Statistics Regulations* (see Subpart D for exceptions), the sender shall present to the post office at the place of mailing a duly executed Declaration for each shipment to any destination under a general license (or to Canada or any other destination for which an export license is not required), from one business concern to another business concern, when the value of the commodity(ies) to be shipped exceeds $500. A Declaration is not required for noncommercial shipments.

* * * * *

(c) * * *

(2) * * *

(i) Any shipment, other than a shipment made under a validated export license, to Country Group T or V if the shipment is valued at $500.00 or less. (As used here "shipment" means all commodities classified under a single seven-digit Schedule B Number, shipped on the same carrier, from one exporter to one importer.);

* * * * *

2. In § 386.3 paragraph (f)(2) is revised to read:

§ 386.3 Shipper's export declaration.

* * * * *

(f) * * *

(2) Mail shipments. For a mail shipment, present one copy of the Declaration to the postmaster at the place of mailing when the shipment: (i) is under a validated license, or (ii) is of a commercial nature and its value is more than $500. Present two copies when an additional copy is required by § 386.3(f)(3) below.

* * * * *

(Secs. 13, 15 and 21, Pub. L. 96-72, 93 Stat. 503, to be codified at 50 U.S.C. App. 2401 *et seq.;* Department Organization Order 10-3 (45 FR 6141, January 25, 1980); and International Trade Administration Organization and Function Order 41-1 (45 FR 11862, February 22, 1980))

Dated: July 3, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-20775 Filed 7-10-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-80-834]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I property improvement, mobile home loans, and combination and mobile home lot loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of FHA financing.

EFFECTIVE DATE: July 18, 1980.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-426-4667).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on mobile home loans and the property improvement loans have been lowered from 16.50 percent to 15.00 percent, and the finance charges on combination loans for the purchase of a mobile home and a developed or undeveloped lot have been lowered from 16.00 percent to 14.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore,

determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart A—Eligibility Requirements—Property Improvement Loans

Section 201.4(a) is amended to read as follows:

§ 201.4 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge exclusive of fees and charges as provided by paragraph (b) of this section which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 15.00 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart B—Eligibility Requirements—Mobile Home Loans

Section 201.540(a) is amended to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by the insured in connection with the loan transaction, shall not exceed 15.00 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

1. In § 201.1511 under paragraph (a), subparagraph (1) is amended to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.*

(1) 14.50 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., July 3, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-20822 Filed 7-10-80; 8:45 am]

BILLING CODE 4210-01-M

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24 CFR Parts 205, 207, 213, 220, 221, 232, 235, 236, 241, 242, 244, and 250

[Docket No. R-80-833]

Mortgage Insurance and Home Improvement Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum interest rates on insured project mortgage loans and Title X land development loans. This action by HUD is designed to bring the maximum interest rate and financing charges for these HUD/FHA-insured loans into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: July 7, 1980.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202–426–4667).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA insured multifamily project mortgage loan programs has been lowered from 16.00 percent to 13.50 percent for construction financing and from 13.00 percent to 12.00 percent for permanent financing. The maximum interest rate for Title X land development loans has been lowered from 14.00 percent to 13.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD's environmental procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, Chapter II is amended as follows:

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

Subpart A—Eligibility Requirements

Section 205.50 is revised to read as follows:

§ 205.50 Maximum interest rate.

Effective on or after July 7, 1980, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum. Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the 13.50 percent rate, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 207.7(a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

Section 213.10(a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart C—Eligibility Requirements—Projects

Section 220.576(a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

Section 221.518(a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 232.29(a) is revised to read as follows:

§ 232.29 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

Section 232.560(a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) On or after July 7, 1980 the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 12.00 percent per annum, with the exception

of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate as previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart D—Eligibility Requirements—Rehabilitation Projects

Section 235.540(a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 12.00 percent per annum, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

Section 236.15(a) is revised to read as follows:

§ 236.15 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee. Moreover, if the permanent mortgage is to be purchased by the Government National Mortgage Association (GNMA), the commitment will be issued at the new lower rate.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

Section 242.33(a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

Subpart A—Eligibility Requirements

Section 244.45(a) is revised to read as follows:

§ 244.45 Maximum interest rate.

(a) Effective on or after July 7, 1980 the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 12.00 percent per annum with respect to permanent financing;

(2) 13.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after July 7, 1980 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the

applicable previous maximum rates, if the higher rate was previously agreed upon by the parties, Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Subpart C—Eligibility Requirements Applicable To All Mortgages To Be Coinsured

Section 250.318(a) is revised to read as follows:

§ 250.318 Maximum mortgage interest rate.

(a) On or after July 7, 1980 the maximum interest rate on which commitments to insure shall be issued shall not exceed 12.00 percent per annum.

* * * * *

(Section 3(a), 82 Stat. 113; 12 U.S.C. 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., July 3, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 80–20823 Filed 7–10–80; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 246

[DoD Directive 1225.5]

Guard Reserve Forces Facilities Projects; Amendment No. 1

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment increases from $100,000 to $175,000 the authorized limit of proposed construction projects funding for operational readiness and mobilization requirements of Guard and Reserve Forces under the authority of Title 10, United States Code, Section 133. All other provisions remain in effect.

EFFECTIVE DATE: February 6, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Bee, Installation and Housing, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Washington, D.C. 20301, Telephone: 202–695–5296.

SUPPLEMENTARY INFORMATION: In FR Doc. 67–12528 appearing in the Federal Register on October 25, 1967 (32 FR 14760) the Office of the Secretary of Defense published Part 246 which established policy for the acquisition of facilities for the Reserve components of the Armed Forces, including minor construction and repair of facilities. In FR Doc. 79–6309 appearing in the Federal Register on March 2, 1979 (44 FR 11774) the Office of the Secretary revised the previously published Part 246 in its entirety due to substantive changes. The following amendment further changes this rule.

PART 246—GUARD/RESERVE FORCES FACILITIES PROJECTS

Accordingly, 32 CFR, Chapter I, Part 246, is amended as follows:

1. Section 246.3 is amended by amending subparagraphs (a)(2) and (a)(2) (iv), (vi), and (vii).

2. Section 246.4 is amended by amending subparagraph (a)(1).

Amended portions of 246.3 now read as follows:

§ 246.3 Policies and procedures.

(a) *General.*

* * * * * *

(2) Each proposed construction project in excess of $175,000 that involves the use of authority contained in 10 U.S.C. 133 shall be submitted to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) or a designee for approval and notification of the Congress, as required by 10 U.S.C. 2233a(1). * * *

* * * * * *

(iv) Each project costing $175,000 or less * * *

* * * * * *

(vi) Any subsequent increase in the estimated cost that exceeds 125 percent of the project cost as initially approved shall be submitted, with justification, to the original approval authority for appropriate adjustment and, for projects which ultimately exceed $175,000, notification of the Armed Services Committees by the ASD(MRA&L) or a designee. * * *

(vii) For those projects whose ultimate costs do not exceed $175,000, the Secretary of the Military Department concerned or a designee shall approve all cost increases. * * *

* * * * * *

Amended portions of 246.4 now read as follows:

§ 246.4 Minor Construction, Repair, and Restoration-of-Damage Projects

(a) *Minor Construction.* (1) The term "minor construction" shall be applied to all Guard/Reserve Forces construction projects that do not exceed $175,000 in cost (except those included in omnibus projects, such as pollution abatement and the energy conservation investment program). Such projects are to be accomplished using available funds specifically identified as minor construction in the approval annual budgets for Military Construction, Guard and Reserve Forces or using appropriations available for Operations and Maintenance, as described in § 246.4(a)(2). Previously approved minor construction projects become invalid as such when the estimated cost exceeds $175,000 and must be resubmitted for approval as military construction projects, using available lump sum authorization. * * *

* * * * * *

(Title 10, U.S.C., Section 2202)

July 7, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80–20821 Filed 7–10–80; 8:45 am]

BILLING CODE 3810–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1536–3]

Approval and Promulgation of State Implementation Plans: State of Missouri

AGENCY: U.S. Environmental Protection Agency.

ACTION: Correction.

SUMMARY: The following corrections are to be made to the Agency's Missouri State Implementation Plan final rule which appeared in the Federal Register on Wednesday, April 9, 1980 (45 FR 24140).

DATE: July 11, 1980.

FOR FURTHER INFORMATION CONTACT: Wayne Leidwanger, Air and Hazardous Materials Division, Environmental Protection Agency, Region VII, Kansas City, Missouri 64106, (816) 374–3791.

Dated: June 24, 1980.

Kathleen Q. Camin,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. In the first column on page 24153, the amendatory language which appears directly under the heading is corrected by changing (c)(15) to (c)(16).

2. In § 52.1320 (c)(15) is corrected to (c)(16). The subparagraphs originally designated as (c)(15) (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), and (K) are redesignated as (c)(16) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), and (xi) respectively. Redesignated paragraphs (c)(16)(i) is corrected by changing 10 CSR 10–5.330 Control of Emissions from Solvent Metal Cleaning to read 10 CSR 10–5.300 Control of Emissions from Solvent Metal Cleaning.

[FR Doc. 80-20700 Filed 7-10-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 81

[FRL 1532-3]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Attainment Status: Nevada and California

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: As a result of redesignation requests from the States of Nevada and California, this notice revises the attainment status designation of Packard Valley in Nevada, and Contra Costa and San Francisco Counties in California from nonattainment to attainment for particulate matter.

DATES: Effective July 11, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn: Morris Goldberg (415) 556–8065.

SUPPLEMENTARY INFORMATION: By letter of December 12, 1979, the State of Nevada, Department of Conservation and Natural Resources, requested that EPA not consider hydrographic area #101(A) Packard Valley as part of nonattainment hydrographic area #101 Carson Desert.

The California Air Resources Board (ARB), on January 17, 1980, requested that EPA redesignate Contra Costa and San Francisco Counties, California, from nonattainment to attainment for the national particulate matter standards.

On April 25, 1980 (45 FR 27957) EPA published a notice of proposed rulemaking concerning the redesignation requests. As discussed in that notice, EPA proposed to approve the redesignations and provided a 30 day comment period. Since no comments were received, EPA takes final action in this notice to redesignate these areas as proposed.

As a result of these redesignations, the requirements of Part D of the Clean Air Act no longer apply for particulate matter in Packard Valley and Contra Costa and San Francisco Counties. EPA finds that good cause exists for making this action effective upon publication. EPA has a responsibility to take final action on these provisions as soon as possible in order to lift the construction moratorium.

Note.—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Dated: July 2, 1980.

Douglas M. Costle,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.305 [Amended]

1. In § 81.305—California, the attainment status designation table for TSP is amended as follows:

A. In the California—TSP table, the status of each county in the San Francisco Bay Area Air Basin is specified, and the designations of Contra Costa and San Francisco Counties are revised.

§ 81.329 [Amended]

2. In § 81.329—Nevada, the attainment status designation table for TSP is amended as follows:

A. The extent of hydrographic area #101, Carson Desert, is changed to 15–24.5N, 25–35E to account for the redesignation of hydrographic area 101A.

B. The Packard Valley hydrographic area (101A) (24.5–28N, 31–34E) is added to the table and designated attainment.

§ 81.305 California.

California—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
San Francisco Bay Area Air Basin				
* * *	*	*	*	*
Alameda County				X
Contra Costa County				X
San Francisco County				X
Santa Clara County	X			
Mountain Counties Air Basin				
* * *	*	*	*	*

§ 81.329 Nevada.

Nevada—TSP

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Las Vegas Valley (212) (15-24S, 56–64E)	X			
Carson Desert (101) (15-24.5N, 25–35E)	X			
Packard Valley (101A) (24.5-28N, 31-34E)				X
* * *	*	*	*	*

[FR Doc. 80-20701 Filed 7-10-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 71

HHS Day Care Regulations; Correction

AGENCY: Office of the Secretary.

ACTION: Final rules; correction.

SUMMARY: This document corrects the final rule on Day Care published at 45 FR 17870, March 19, 1980.

In the FR Doc. 80-8263 appearing on Wednesday, March 19, 1980, on page 17885, make the following correction:

On page 17885 in Subpart 71.64 delete the word "staffing" and insert the words "group composition" before "requirements in § 71.24" in the first Sentence.

FOR FURTHER INFORMATION CONTACT: Warren Master, Acting Director, Office of Policy Development, Office of Human Development Services, Room 736E, Hubert H. Humphrey Bldg., 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6275.

Approved: July 3, 1980.

Robert F. Sermier,

Acting Deputy, Assistant Secretary for Management Analysis and Systems.

[FR Doc. 80-20747 Filed 7-10-80; 8:45 am]

BILLING CODE 4110-92-M

Proposed Rules

Federal Register
Vol. 45, No. 135
Friday, July 11, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253, 283

[Amendment No. 1]

Food Stamp and Food Distribution Programs on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule applies only to the Food Distribution Program on Indian reservations and consists of technical amendments to Part 283 which was published on June 19, 1979. The amendments correct oversights in the original rulemaking or provide interpretations of the intent of the June 19, 1979 rules.

DATE: Comments should be received by September 9, 1980.

ADDRESS: Comments on these amendments should be submitted to Darrel E. Gray, Director, Food Distribution Division, Room 510, 500 12th Street, SW, Washington, D.C. 20250. A final rulemaking will be issued after considering the comments. All written comments, suggestions or objections will be open for public inspection at the above address during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). An Impact Analysis Statement has been prepared and approved and is available from Mr. Gray. A copy will also be open for public inspection at the office shown above.

FOR FURTHER INFORMATION CONTACT: Darrel E. Gray, Director, Food Distribution Division, 500 12th Street, SW, Washington, D.C. 20250, (202) 447-8371.

SUPPLEMENTARY INFORMATION: On June 19, 1979 (44 FR 35904), the Department published final rules concerning the Food Stamp and Food Distribution Programs on Indian reservations.

The proposed rules require that if an Indian tribal organization wants areas near the reservation to be served by the Food Distribution Program then it must describe the geographic boundaries of the near areas. FNS will review these areas for reasonableness so that Indians living near the reservations, who do not live in urban areas, will be served by the commodity program.

The Department had originally assumed that the issue of who lives sufficiently near the reservation would be self-defining by the household. The Department had also presumed that many Indian tribal households living near the reservation would be unwilling to travel very far to obtain commodities especially since they are provided the alternative of food stamps. However since publication of the June 19, 1979 rules, instances have arisen where Indian tribal organizations (ITO's) have wanted to serve Indian tribal households living in urban areas up to 200 or 300 miles from the reservation.

The Food Distribution Program was never intended to replace the Food Stamp Program in urban areas. Furthermore, it was the intent of the June 19, 1979 rules to provide Food Distribution Program services to Indian tribal households living near the reservation to be consistent with other Federal agencies that allow for the delivery of services beyond reservation boundaries to areas generally contiguous to the reservation.

It is also proprosed that the June 19, 1979 regulations be revised to require submission of annual State Plans of Operation. This is a technical revision since the State Plan of Operation is Part IV of the annual budget submission, the AD-623. Since State Plans of Operation will be required annually, it is also proposed that the requirement for periodic consultation on the State Plan of Operation, between the State agency and ITO be deleted. With submission of annual State Plans of Operation the State agency would be required to consult with the ITO at least once a year.

For purposes of program simplification, and because so few households were ever affected, it is also proposed that newly designated Part 253.6 and 253.7 be amended to eliminate profits from capital gains as an income source. The communal ownership of capital property common among Indians has complicated the determination of household capital gains for Indians. However, if such exclusion becomes subject to abuse the Department would consider whether to appropriately amend the regulations. Further it is proposed that the examples provided in the June 19, 1979 regulations under the vendor payments provisions be eliminated as they appeared to be a source of confusion for program administrators and were never intended to limit the situations under which vendor payments could be excluded as income.

In response to concerns expressed by Food Distribution Program administrators we are proposing to allow the use of emergency authorized representatives in cases of household illness or other unforeseen circumstances that prevent the household from otherwise obtaining commodities for which it is eligible.

Finally, it is proposed that newly designated Part 253.7 be amended to not require the use of the notice of adverse action form in instances where households are switching from the Food Distribution Program to the Food Stamp Program. While the use of the notice of adverse form was never intended to cover program switchovers, particularly because there may not always be sufficient time left in the month of termination to issue the traditional adverse action form, the June 19, 1979 regulations did not specifically state that as our policy and there was confusion on the part of program administrators over the applicability of the notice of adverse action for households switching programs.

Additionally, we are taking this opportunity to transfer the regulations governing the participation of Indian households in the Food Distribution Program from the Food Stamp Program regulations to regulations governing the operation of the Food Distribution Program. This numbering change is not intended to have any substantive impact and is done also to provide more regulation numbers for use in the Food Stamp Program.

Therefore, the contents of Part 283, Subchapter C (Food Stamp Program) of Chapter I is redesignated in its entirety to Subchapter B (Food Distribution Program) of Chapter II and renumbered as Part 253. The titles and section numbers are listed below:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

Sec.
253.1 General purpose and scope.
253.2 Definitions.
253.3 Availability of commodities.
253.4 Administration.
253.5 State agency requirements.
253.6 Eligibility of households.
253.7 Certification of households.
253.8 Commodity control, storage, and distribution.
253.9 Administrative funds for State agencies:

In newly designated § 253.4, it is proposed that paragraph (d) be amended and read as follows:

§ 253.4 Administration.

* * * * *

(d) *Application by an ITO.* An ITO which desires to participate in the Food Distribution Program shall file an application with the FNS Regional Office serving the State or States in which the reservation is located. The ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wants to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FNS review and approval. The application shall also provide other information requested by FNS, including, but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c). Properly addressed applications shall be acknowledged by the FNS Regional Office in writing within five working days of receipt.

* * * * *

In newly designated § 253.5, it is proposed that the introductory text of paragraph (a)(1) be revised and read as follows: set forth below and paragraph (a)(1)(iii) be deleted.

§ 253.5 State agency requirements.

(a) *Plan of operation.* (1) The State agency which assumes responsibility for the Food Distribution Program shall submit an annual plan of operation for approval by FNS as a part of its Form AD–623 "Application for Federal Assistance" as required in Section 253.9(c). Approval of the annual plan by FNS shall be a prerequisite to the donation of commodities available for use by households under Part 250 of this chapter and to the payment of administrative funds under § 253.9 of this part. No amendment to the plan of operation of any State agency shall be effective without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. If the State agency is not an ITO, the appropriate agency of the State government shall also:

(i) * * *
(ii) * * *
(iii) (Deleted)

* * * * *

In newly designated § 253.6, it is proposed that paragraph (e)(2)(i)(B) be amended and read as follows:

§ 253.6 Eligibility of households.

* * * * *

(e) * * *
(2) * * *
(i) * * *

(B) The total gross income from a self-employment enterprise. Ownership of rental property shall be considered a self-employment enterprise. Payments from a roomer and returns on rental property shall be considered self-employment income.

* * * * *

In newly designated § 253.6, it is proposed that paragraph (e)(3)(i)(B) be amended and read as follows:

* * * * *

(e) * * *
(3) * * *
(i) * * *

(B) *Vendor Payments.* A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household.

* * * * *

In newly designated § 253.7, it is proposed that paragraph (a)(10)(ii) be amended and read as follows:

§ 253.7 Certification of households.

* * * * *

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed except that the household may be permitted to designate an emergency authorized representative in the event that illness or other unforeseen circumstances prevent the household from otherwise obtaining commodities. Designation of an emergency authorized representative must be made in writing by a responsible member of the household. State agencies may distribute commodities to household members or authorized representatives presenting an identification card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

* * * * *

In newly designated § 253.7, it is proposed that paragraph (b)(1)(iii) be amended and read as follows:

* * * * *

(b) * * *
(1) * * *

(iii)(A) Self-employment income which represents a household's annual support shall be annualized over a 12-month period, even if the income is received in only a short period of time. For example, self-employment income received by farmers shall be averaged over a 12-month period if the income represents the farmer's annual support.

(B) Self-employment income which represents only a part of a household's annual support shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(C) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income, exclude the cost of producing the self-employment income and divide the net self-employment income by the number of months over which the income will be averaged. The allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw materials, seed and fertilizer, interest paid on income producing property, insurance premiums, and taxes paid on income producing property.

(D) In determining net self-employment income, payments on the principle of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods, net losses from previous periods, Federal State and local income taxes, money set aside for retirement purposes, and other work-related purposes, and other work-related personal expenses (such as transportation to and from work) will not be allowable costs of doing business.

* * * * *

In newly designated § 253.8, it is proposed that paragraph [b][3][iii][A] be amended and read as follows:

§ 253.8 Commodity control, storage and distribution.

* * * * *

(b) * * *

(3) * * *

(iii) *Notice of adverse action.* (A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to the Food Stamp Program, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken.

* * * * *

Part 283—[Renumbered Part 253]

Note.—This proposal has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations", and has not been classified "Significant." An approved Draft Impact Statement is available from Darrel E. Gray, Director, Food Distribution Division, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027) and 91 Stat. 980 (7 U.S.C. 6139 and 1307).

(Catalog of Federal Domestic Assistance Programs 10.550, Food Distribution.)

Dated: July 2, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-20891 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-03-M

Rural Electrification Administration

7 CFR Part 1701

REA Bulletin 103–2: Use and Approval of General Funds for Additions to Plant; Revision of Existing Bulletin

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise Bulletin 103–2, Use and Approval of General Funds for Additons to Plant. Due to higher construction and other costs of utility plant additions, borrower requests for approval to use funds for utility plant additions under existing rules, as contained in Bulletin 103–2, dated June 18, 1971, have risen substantially. The intent of the proposed action is to reduce the workload of both REA borrowers and REA personnel in preparing, reviewing, processing and approving requests for general fund expenditures.

DATE: Public comments must be received by REA no later than September 9, 1980.

ADDRESS: Submit written comments to the Director, Electric Loans and Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Francis E. Saulnier, Loans Specialist, Room 3862, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number (202) 447–8466. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Bulletin 103–2, Use and Approval of General Funds for Additions to Plant. This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

General Summary of Changes

We propose the following changes in Bulletin 103–2:

The use of general funds for plant additions as listed below requires REA approval by the area office in Washington [Paragraph IV, REA Bulletin 103–2. Only those listed below have been changed.]

1. All new generating facilities or additions or modifications to existing facilities that:

a. Result in increased capacity; or

b. Involve an expenditure exceeding $200,000; except, power supply borrowers may expend an amount equal to the lesser of $2,000,000 or 3 percent of investment in plant in service to purchase or option potential power plant sites.

2. Transmission facilities or modifications in design of existing facilities including additions to provide for or connect to new power sources or which involve an expenditure of $500,000 and in the case of power supply, the sum of $1,000,000.

3. Additions to serve large power loads when (1) the anticipated load will exceed 4,000 kilowatts, or (2) the investment exceeds $400,000 for a single consumer.

4. The purchase of automatic data processing equipment where the cost will exceed $50,000.

5. Headquarters facilities, or the remodeling of headquarters facilities, which involve an estimated expenditure exclusive of the cost of land, which will result in a total investment in headquarters facilities by a distribution borrower of more than 7 percent of its overall investment in distribution plant.

In addition, Environmental aspects of the proposed construction must have been satisfied in accordance with REA Bulletin 20–21, Environmental Policies and Procedures.

Copies of the proposed action are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Dated: July 7, 1980.

Robert W. Feragen,

Administrator.

[FR Doc. 80-20788 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-28]

Equal Application Rule; Change in Hearings Schedule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of change in hearings schedule.

SUMMARY: On June 24, 1980, the Economic Regulatory Administration of the Department of Energy issued a Notice of Proposed Rulemaking (45 FR 44238, June 30, 1980) which proposed alternative amendments to the Mandatory Petroleum Pricing Regulations modifying or eliminating the equal application rule with respect to sales of gasoline. Two public hearings were announced in the Notice, one to be held in Washington, D.C. on July 15, 1980, and the other in San Francisco, California, on July 22, 1980. However, in order to provide more adequate time for participants to prepare testimony, ERA hereby gives notice that the San Francisco hearing date is changed to August 15 and the Washington hearing date is changed to August 19. The San Francisco hearing will be held at the Golden Gate Way Holiday Inn, Redwood Room, 1500 Van Ness Avenue, San Francisco, California. The Washington hearing will be held at the same location as specified in the Notice of Proposed Rulemaking.

DATES: Requests to speak at the San Francisco hearing should be addressed to Terry Osborn, Department of Energy, 333 Market Street, San Francisco, California 94111, (415) 764–7025, by August 8, 1980.

Requests to speak at the Washington, D.C. hearing to Office of Public Hearing Management, Room 2313, 2000 "M" Street, N.W., Washington, D.C. 20461, (202) 653–3757, by August 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2214–B, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3757.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4055.

Chuck Boehl (Regulations and Emergency Planning), Economic Regulatory Administration, Room 7302, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3202.

William Funk or William Mayo Lee (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

Issued in Washington, D.C., July 8, 1980.

F. Scott Bush,

Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

[FR Doc. 80-20837 Filed 7-10-80; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Parts 207, 208, 212, and 214

[Economic Regulations, Docket: 37169, Dated: July 8, 1980, EDR-405]

Charter Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to eliminate the clause in most charter contracts by which airlines exempt themselves from the obligation to return stranded charter passengers. This would require airlines to return charter passengers who are stranded by a strike or other interruption of the airline's service, or pay the consequences. This action responds to a petition for rulemaking from Golden Holiday Tours.

DATES: Comments by: August 25, 1980. Reply comments by: September 9, 1980.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: July 21, 1980.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 37169, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: Golden Holiday Tours, Inc., a charter operator, has petitioned the Board for a rule that would make a direct air carrier responsible for returning charter passengers who are stranded by a strike against that carrier or by other interruptions of its services. Currently, most charter contracts between direct air carriers and the charter operators contain a provision, known as the *force majeure* clause, that relieves the direct carrier from any obligation to provide transportation for stranded charter passengers. The *force majeure* clause in most of these contracts lists a strike as an event excusing performance. If a direct carrier cancels the return leg of a charter, its only obligation typically is to refund that portion of the operator's payment that is attributable to the unperformed air transportation. The charter operator, however, is required by the cancellation provision in its contract with passengers (§ 380.32(k) of the Board's Public Charter rule, 14 CFR Part 380) to refund their total payments to the passenger when the return leg is not performed. Section 380.32(k) is applicable to this situation because the failure to perform the return leg has been held, in an interpretation by our General Counsel that we ratify here, to constitute a cancellation of the entire charter. Order 79–8–72. The effect of the *force majeure* clause and § 380.32(k) is to place the onus of securing substitute transportation for stranded passengers on the charter operator. This usually means a substantial loss of revenue for a charter operator, because the cost of the substitute transportation is generally more than the refund of the unused transportation deposits that the operator receives from the direct carrier.

Golden Holiday sought to shift the burden of arranging and paying for the substitute transportation by the addition of a new provision to 14 CFR Parts 207, 208, 212, and 214 that would obligate the direct carrier involved to either operate its own aircraft or arrange, at its own expense, substitute air transportation on another airline to return the stranded passengers. The direct air carrier would also be required to provide meals and lodging to any delayed passengers as required by the Board's flight delay rules. The petition was prompted primarily by the problems that occurred during the World Airways strike last summer. It was alleged at the time that World had "walked away" from its charter obligations, leaving the burden for securing alternate transportation for the stranded passengers with the charter operators. This caused financial problems for charter operators who were forced to procure alternate transportation at a substantially higher cost.

The United States Tour Operator Association and several charter operators (Davis Agency, International Leisure Corp., Trans National Travel, Travel Charter, Travel and C, Charter Travel Corp., Deutsches Reisebuero, Europa Travel Service, Jetaway, Schwaben Charters, and American Travel Abroad) filed answers in support of the petition. Transamerica Airlines, a direct air carrier, filed an answer in opposition.

The thrust of the argument of the petitioner and its supporters was that fairness requires that the party that is responsible for stranding the charter passengers bear the cost of bringing them home. The direct air carrier, in their view, should not be able to escape this responsibility by a *force majeure* clause in its charter contract. They further stated that since the direct carrier has earlier notice and more knowledge of a strike or other potential service interruption than charter operators, it is in a better position to prevent a stranding from occurring. The direct carrier is also better able to solve a problem if it develops; it will usually be in the best position to arrange for another carrier to transport stranded passengers.

The operators further argued that market forces alone cannot be relied on to solve their problem. They claimed that the superior bargaining power of the direct air carriers prevented operators from negotiating a charter contract with a direct carrier that included a fair allocation of the burdens of returning stranded passengers. Not only is the direct carrier able to exempt

itself from any responsibility for returning stranded passengers, but when the stranding occurs, the direct carrier is holding the operator's money and does not refund it in time for the operator to use it to arrange alternate transportation. Even if the money were refunded in time, the operators claimed that it would only cover part of the cost of arranging another flight.

Transamerica Airlines, in its answer, stated that there was no authority in the Federal Aviation Act to grant the relief requested by the petitioner. It argued further that doing so would be contrary to the move to deregulate the airline industry. Forcing the direct carrier to provide substitute service for stranded charter passengers would, in Transamerica's view, eliminate an ancient contracting principle that permits nonperformance or cancellation in the event of a *force majeure* or "Act of God." This would lead to higher charter prices as direct carriers raised prices to cover their increased financial risk. Transamerica also claimed that it would constitute an unwarranted interference by a government agency into airline management and labor relations, which would shift the power in the bargaining process too far in favor of labor. A direct carrier faced with the absolute requirement of providing the substitute service would not be able to withstand labor's wage demands even of they were inflationary. The potential inflationary impact of this rulemaking requires, according to Transamerica, a full regulatory analysis as described in PS–88, 44 FR 65052, November 9, 1979.

Transamerica stated that making the direct carrier responsible for returning stranded charter passengers would also be unfair and discriminatory if no similar action were taken regarding scheduled service. Rather than extending the rule to scheduled carriers, however, Transamerica requested that a typical remedy for scheduled service passengers who are stranded be applied to stranded charter passengers. Under the scheme favored by Transamerica, the operator and the passenger would be offered a choice between accepting a refund of the unused transportation deposits or alternate transportation, probably at a higher price.

Transamerica's suggestion, offering stranded passengers only the option of a partial refund or substitute transportation home at a higher price, amounts to placing the risk of the event solely on the affected passengers. Although we have by our previous action rejected this course, and again tentatively reject it here, we recognize that such a position is not inconceivable and has some points in its favor. All costs are ultimately borne by passengers, and the question on this point is whether the costs added by such events as strikes should be borne by all passengers in the form of slightly increased prices, or should be borne only by those directly affected, in the form of a sudden and substantial additional cost of returning home. The latter position increases passengers' freedom, by minimizing basic charter prices and leaving the increment in their pocket, and by giving them the choice of charter versus more secure forms of travel, and perhaps the choice of buying or not buying insurance against stranding as they choose to accept or buy out of the risk. This course also has the virtue of taking the government out of the picture and thus eliminating regulatory costs, including the intangible and cumulative costs of restricting business management freedom.

Our tentative decision not to let the burden of unexpected cancellations fall on stranded passengers is based on our perception that the public is not willing at this time to accept this uncertainty as a normal aspect of charter travel. Scheduled carriers, by relatively uniform tariff provisions, regularly accept the flight coupons of passengers on other carriers whose flights have been cancelled for any reason, so that the public does not encounter the problem on scheduled service. The average charter traveler, therefore, probably either is not aware of the possibility of stranding or does not consider it sufficiently probable to worry about. From our experience with stranded charter passengers in recent years, it appears that many of them were not prepared for the possibility, some did not have immediate access to funds to return home, and they generally looked to the U.S. government to "cure" the problem. In short, charter stranding seems to be generally viewed by those concerned as an emergency. As long as it is viewed in that way, and not as an accepted gamble incident to charters, we feel that the public interest lies in dealing with *force majeure* interruptions in an orderly way, requiring the industry to protect the public from the unexpected.

Section 380.31(f) now requires the charter operator to include a space in the operator-participant contract to be checked by passengers who wish to find out about trip cancellation insurance. That insurance, however, deals only with the loss of a deposit due to the participant's cancellation. As a possible alternative to the rule proposed here, we request comments on whether passenger's insurance for *force majeure* cancellation would be available, and would be preferable to the proposed rule.

The remaining question is whether the direct carrier or the charter operator should bear the primary burden of ensuring that the passengers are returned home. The Board now tentatively concludes that the direct air carriers should have this responsibility and should not be able to escape it by the inclusion of a *force majeure* clause in their charter contracts. The direct carrier is the party in the best position to make alternate arrangements. It will generally have greater bargaining power and greater financial resources immediately available to it, and is thus in a better position than the operator to obtain and pay for substitute transportation. Also, the direct carrier is likely to have superior knowledge about the likelihood of many types of service disruptions.

For example, although a union typically decides whether to strike, the direct carrier is usually aware of labor problems, and typically is also aware of the termination date of its labor contracts, or other dates on which a strike may occur. On the basis of this knowledge, the direct carrier can cancel the charter in advance or take other anticipatory actions that will minimize its costs and the hardships of the charter participants. Indeed, one of the underlying purposes of this rule would be to discourage a carrier from taking charter passengers on the outbound leg of a charter when it anticipates that it may be unable to provide or arrange for the promised return transportation.

Another reason for granting the petition is that the direct air carrier is more likely to be accessible to stranded charter passengers. Most charter operators do not have representatives stationed at the flight's destination, especially where the charter involves an international flight. The airline typically does have a representative there. Moreover, the charter passengers are more likely to be aware of the identity of the airline on which they are traveling than that that of the operator who arranged their tour, and are likely to turn to the airline for help.

These factors tend to make it in the public interest to prohibit carriers from including the *force majeure* clause in charter contracts. In enacting the Airline Deregulation Act of 1978, Pub. L. 95–504, Congress did not intend to limit the Board's authority to adopt regulations for the protection of charter consumers. *Conference Report No. 95–1779,* 95th Cong., 2d Sess. 68, *reprinted* in (1978) U.S. Code Cong. & Ad. News 3773, 3785.

We consider the adequate service provision of section 404(a), the prohibition on unfair practices in section 411, and our general powers under section 204 of the Act to be sufficient authority for taking this action.

We do not agree that the adoption of the rule proposed here would be discriminatory. We have not found that that there is so serious a problem for passengers on scheduled service as to warrant the imposition of additional rules for that mode. Many scheduled service carriers have tariffs agreeing to reroute, at no additional charge, passengers who purchased tickets prior to a strike. We have, on the other hand, found from the information before us that protection from stranding is needed by charter passengers. In such circumstances, it is not necessary to reach a final decision on additional protections for scheduled service passengers before proceeding with this rulemaking for charters. We are, however, continuing to observe the analogous situations concerning scheduled service, and specifically request comments on whether the problems caused by disruptions of scheduled service are severe enough to warrant action.

We do not dispute Transamerica's contention that this proposal may, if adopted, raise the price of charters. Any Board action to alleviate the problem of strandings will have costs and will require a tradeoff between low prices and improved consumer protection. We have tentatively decided that the additional protection for charter passengers proposed here is worth its cost and achieves a reasonable balance. furthermore, since strikes and other serious service interruptions are not a frequent occurrence in any given year, we do not expect the cost increase to the airline industry or the effect on the economy to be major. Only major cost increases for airlines or an effect on the economy of 100 million dollars annually would call for us to perform a formal regulatory analysis. The cost to individual airlines and passengers should also be minimal. It is likely that the cost of returning stranded passengers will be distributed among all charter passengers by a small increase in the price of all charter tickets. This seems preferable to placing the total financial burden on the unfortunate few who are the victims of an interruption in service. Commenters disagreeing with this cost assessment should present detailed cost data to support their claims.

The Board is therefore granting the petition for rulemaking and proposing to prohibit direct carriers from including the *force majeure* clause in charter contracts. Under this proposal, failure of the direct air carrier to perform the return transportation would be a breach of the charter contract, and the charter operator or other charter would be entitled to pursue normal contract remedies against the airline.

The proposed amendment is intended to make clear that the carrier under contract must provide or arrange for return transportation without attempting to pass through its costs incurred by the *force majeure* event. Otherwise, the change could be made nugatory by contract provisions that force the tour operator to pay such additional costs. By stating in proposed § 207.4b that the charter contract may not contain *force majeure* provisions "abrogating or limiting [its obligations to provide return transportation] in any way, or raising the price of the service provided," the proposed amendments would have the effect of eliminating the contract-altering effect of strikes and other disruptive events. it would not, however, prevent cost pass-through clauses for reasons such as higher fuel costs, since they would not be "events that disrupt the carrier's operations."

The Golden Holiday petition was directed primarily to interruptions in service caused by strikes against the direct carrier. We specifically request comments on whether the relief should be directed only to that type of event or whether it should be of a broader nature as we propose.

To facilitate arrangements for substitute transportation, we are also proposing exceptions to the planeload requirement and to restrictions in carriers' certificates or permits. The current rules allows charter flights that consist of two or more groups, as long as the entire capacity of a plane is booked for charter service. A paragraph would be added to §§ 207.11, 208.6, 212.8, and 214.7 containing exceptions from this requirement for planeloads that are not full as a result of arrangements for substitute transportation. This would remove any barriers to the provision of substitute service.

Problems of arranging substitute transportation would also be eased by allowing the direct carrier to subcontract with any carrier that has a plane available, regardless of whether that other carrier would ordinarily have certificate or permit authority to perform that charter. The need to minimize the hardship to stranded passengers overrides any concerns about excessive wet-leasing or unauthorized transportation, other than cabotage, that might otherwise be controlling.

The amendment of Part 214 proposed here would add a paragraph to § 214.7, exempting foreign charter-only carriers from secton 402 of the Act to the extent necessary to perform substitute charters outside the area described in their permits. For the same reason, we are proposing an amendment to Part 208 that would add a paragraph to § 208.6, exempting U.S. charter carriers from section 401 of the Act to allow such charters outside the area described in their certificates. The exemption for foreign carriers in Part 214 would be limited to charters in foreign air transportation.

Accordingly, the Civil Aeronautics Board proposes to amend Chapter II of Title 14, Code of Federal Regulations, as follows:

1. In Part 207, the Table of Contents would be amended by adding a new § 207.4b to Subpart A, to read:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Subpart A—General Provisions

* * * * *

Sec.

207.4b Carrier's obligation in case of interruptions of its service.

* * * * *

2. A new § 207.4b would be added, to read:

§ 207.4b Carrier's obligation in case of interruptions of its service.

(a) A charter contract between a direct air carrier and a charter operator that includes an obligation of the carrier to perform a return trip for charter participants shall contain no provisions abrogating or limiting that obligation in any way, or raising the price of the service provided, because of labor problems, equipment shortages or difficulties, *force majeure*, or other events that disrupt the carrier's operations. The carrier's contractual obligation to perform the return trip, either directly or by arranging substitute transportation, shall thus remain in force despite such events, and may be enforced by any legal means available to the contracting charter operator or the participants.

(b) Nothing in this section shall exempt a charter operator from its obligation to refund participants' money under § 380.32 or 380.33 of this chapter if the return transportation is not provided by the air carrier.

3. In § 207.11, a new paragraph (c) would be added, to read:

§ 207.11 Charter flight limitations.

* * * * *

(c) To the extent necessary to provide air transportation in case of interruptions of service, an air carrier may perform a charter with less than the entire capacity of an aircraft engaged, notwithstanding paragraphs (a)(2), (a)(3), and (a)(4) of this section.

4. In Part 208, the Table of Contents would be amended by adding a new § 208.31c to Subpart A, to read:

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

Subpart A—General Provisions

* * * * *

Sec.
§ 208.31c Carrier's obligation in case of interruptions of its service.
* * * * *

5. In § 208.6, new paragraphs (c) and (d) would be added, to read:

§ 208.6 Charter flight limitations.

* * * * *

(c) To the extent necessary to provide air transportation in case of interruptions of service, an air carrier may perform a charter with less than the entire capacity of an aircraft engaged, notwithstanding paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(d) Each air carrier operating under this part is hereby exempted from section 401 of the Act to the extent necessary to provide, in case of interruptions of service, substitute transportation outside the area described in its certificate for charter passengers of another air carrier or foreign air carrier, in accordance with paragraph (a)(2)(i) or (a)(3)(i) of this section.

6. A new § 208.31c would be added, to read:

§ 208.31c Carrier's obligation in case of interruptions of its service.

The provisions of § 207.4b of this chapter shall apply to passenger charters operated under this part.

7. In Part 212, the Table of Contents would be amended by adding a new § 212.3b to Subpart A, to read:

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Subpart A—General Provisions

* * * * *

Sec.
212.3b Carrier's obligation in case of interruptions of its service.
* * * * *

8. A new § 212.3b would be added, to read:

§ 212.3b Carrier's obligation in case of interruptions of its service.

The provisions of § 207.4b of this chapter shall apply to passenger charters operated under this part.

9. In § 212.8, a new paragraph (c) would be added, to read:

§ 212.8 Charter flight limitations.

* * * * *

(c) To the extent necessary to provide air transportation in case of interruptions of service, an air carrier may perform a charter with less than the entire capacity of an aircraft engaged, notwithstanding paragraphs (a)(1), (a)(2), and (a)(3) of this section.

10. In Part 214, the Table of Contents would be amended by adding a new § 214.13b, to read:

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

* * * * *

Sec.
214.13b Carrier's obligation in case of interruptions of its service.
* * * * *

11. In § 214.7, new paragraphs (d) and (e) would be added, to read:

§ 214.7 Charter flight limitations.

(d) To the extent necessary to provide air transportation in case of interruptions of service, a foreign air carrier may perform a charter with less than the entire capacity of an aircraft engaged, notwithstanding paragraphs (a), (b), and (c) of this section.

(e) Each foreign air carrier operating under this part is hereby exempted from section 402 of the Act to the extent necessary to provide, in case of interruptions of service, substitute transportation outside the area described in its permit for charter passengers of another air carrier or foreign air carrier, in accordance with paragraph (a)(1) or (b)(1) of this section and the provisos in § 214.9a(a) (post-charter reporting required but not Statement of Authorization). This exemption is limited to charters in foreign air transportation.

12. A new § 214.13b would be added, to read:

§ 214.13b Carrier's obligation in case of interruptions of its service.

The provisions of § 207.4b of this chapter shall apply to passenger charters operated under this part.

(Secs. 204, 401, 402, 404, and 411 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 757, 760, and 769; 49 U.S.C. 1324, 1371, 1372, 1374, and 1381)

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-20781 Filed 7-10-80; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-1173]

Reserve for Certain Guaranteed Debt Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to treatment of reserves for certain guaranteed debt obligations. Changes in the applicable tax law were made by the Act of November 2, 1966. The regulations would provide the public with the guidance needed to comply with that Act and would affect taxpayers who have a reserve for guaranteed debt obligations or intend to set up such a reserve.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 9, 1980. The amendments are proposed to be generally effective for taxable years ending after October 21, 1965.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-1173], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3671, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 166 (f) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to changes made by the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151) (the Act), which added section 166 (g) to the Internal Revenue Code of 1954. Section 166 (g) was redesignated as section 166 (f) by section 605 of the Tax Reform Act of 1976 (90 Stat. 1575). The regulations are to be issued under the authority contained in sections 166 (f) and 7805 of

the Internal Revenue Code of 1954 (26 U.S.C. 166 (f) and 7805).

Discussion

Section 166 (f) (1) provides that a taxpayer who is a dealer in property may take an income tax deduction for reasonable additions to a reserve for bad depts which may arise from the dealer's contingent liability as a guarantor, endorser, or indemnitor of debt obligations arising out of the sale by the dealer of real property or tangible personal property (including related services) in the ordinary course of the dealer's trade or business.

Section 166 (f) (2) makes section 166 (f) (1) the exclusive section under which a deduction is allowable for an addition to a reserve for guaranteed debt obligations.

Section 166 (f) (3) provides that a taxpayer shall establish an opening balance for a reserve for section 166 (f) (1) (A) guaranteed obligations as if the taxpayer had maintained the reserve in prior years.

To prevent a doubling up of deductions in the period of transition from the specific charge-off method of treating these obligations to the new method, section 166(f)(4) provides that the opening balance of the new reserve must be placed in a suspense account. Sections 81 and 166(f)(1)(B) mandate an addition to or a deduction from income based upon a required annual adjustment to the suspense account.

Generally, section 166(f) is effective for taxable years ending after October 21, 1965. However, section 2(b) of the Act sets forth a transitional rule allowing some taxpayers to take deductions in earlier years.

In addition, section 1(c) of the Act allows taxpayers a grace period in which to adopt such a reserve method without obtaining the permission of the Service. The proposed regulations would extend that grace period until ninety days after the regulations are finalized.

Nothing in the new law or these proposed amendments would affect the longstanding principle that additions to a reserve for bad debts previously deducted in computing taxable income must be included in taxable income when and to the extent that the reserve is no longer necessary.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Phoebe A. Mix of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.166–1 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1.166–1 Bad debts.

* * * * *

(b) *Manner of selection method.* * * *

(4) Nothwithstanding paragraph (b) (1), (2), and (3) of this section, a dealer in property currently employing the accural method of accounting and currently maintaining a reserve for bad debts under section 166(c) (which may have included guaranteed debt obligations described in section 166(f)(1)(A)) may establish a reserve for section 166(f)(1)(A) guaranteed debt obligations for a taxable year ending after October 21, 1965 under section 166(f) and § 1.166–10 by filing on or before [insert the day that is ninety days after publication in the Federal Register of final regulations under section 166(f)] an amended return indicating that such a reserve has been established. The establishment of such a reserve will not be considered a change in method of accounting for purposes of section 446(e). However, an election by a taxpayer to establish a reserve for bad debts under section 166(c) shall be treated as a change in method of accounting. See also § 1.166–4, relating to reserve for bad debts, and § 1.166–10, relating to reserve for guaranteed debt obligations.

* * * * *

Par. 2. Paragraph (a) of § 1.166–4 is amended by adding at the end thereof the following:

§ 1.166–4 Reserve for bad debts.

(a) *Allowance of deduction.* * * *

This paragraph applies both to bad debts owed to the taxpayer and to bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations. If a reserve is maintained for bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations, then a separate reserve must also be maintained for all other debt obligations of the taxpayer in the same trade of business, if any. A taxpayer may not maintain a reserve for bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations if with respect to direct debt obligations in the same trade or business the taxpayer takes deductions when the debts become worthless in whole or in part rather than maintaining a reserve for such obligations. See § 1.166–10 for rules concerning section 166(f)(1)(A) guaranteed debt obligations.

* * * * *

Par. 3. The following new section is inserted immediately after § 1.166–9:

§ 1.166–10 Reserve for guaranteed debt obligations.

(a) *Definitions.* The following provisions apply for purposes of this section and section 166(f):

(1) *Dealer in property.* A dealer in property is a person who regularly sells property in the ordinary course of the person's trade or business.

(2) *Guaranteed debt obligation.* A guaranteed debt obligation is a legal duty of one person as a guarantor, endorser or indemnitor of a second person to pay a third person. It does not include duties based solely on moral or good public relations considerations that are not legally binding. A guaranteed debt obligation typically arises where a seller receives in payment for property or services the debt obligation of a purchaser and sells that obligation to a third party with recourse. However, a guaranteed debt obligation also may arise out of a sale in respect of which there is no direct debtor-creditor relationship between the debtor purchaser and the seller. For example, it arises where a purchaser borrows money from a third party to make payment to the seller and the seller guarantees the payment of the purchaser's debt. Generally, debt obligations which are sold without recourse do not result in any obligation of the seller as a guarantor, endorser, or indemnitor. However, there are certain without-recourse transactions which may give rise to a seller's liability as a guarantor or indemnitor. For example, such a liability may arise where a holder of a debt obligation holds money or other property of a seller which the holder may apply, without seeking permission of the seller, against any uncollectible debt obligations transferred to the holder by the seller without recourse, or where the seller is under a legal obligation to reacquire the

real or tangible personal property from the holder of the debt obligation who repossessed property in satisfaction of the debt obligations.

(3) *Real or tangible personal property.* Real or tangible personal property generally does not include other forms of property, such as securities. However, if the sale of other property is related to the sale of actual real or tangible personal property, the other property will be considered to be real or tangible personal property. In order for the sale of other property to be related, it must be—

(i) Incidental to the sale of the actual real or tangible personal property; and

(ii) Made under an agreement, entered into at the same time as the sale of actual real or tangible personal property, between the dealer in that property and the customer with respect to that property.

The other property may be charged for as a part of, or in addition to, the sales price of the actual real or tangible personal property. If the value of the other property is not greater than 20 percent of the total sales price, including the value of all related services other than financing services, the sale of the other property is related to the sale of actual real or tangible personal property.

(4) *Related services.* In the case of a sale of both property and services a determination must be made as to whether the services are related to the property. Related services include only those services which are—

(i) Incidental to the sale of the real or tangible personal property; and

(ii) To be performed under an agreement, entered into at the same time as the sale of the property, between the dealer in property and the customer with respect to the property.

Delivery, financing, installation, maintenance, repair, or instructional services generally qualify as related services. The services may be charged for as a part of, or in addition to, the sales price of the property. Where the value of all services other than financing services is not greater than 20 percent of the total of the sales price of the property, including the value of all the services other than financing services, all of the services are considered to be incidental to the sale of the property. Where the value of the services is greater than 20 percent, the determination as to whether a service is a related service in a particular case is to be made on the basis of all relevant facts and circumstances.

(5) *Examples.* The following examples apply to paragraph (a) (4) of this section:

Example (1). A, a dealer in television sets, sells a television set to B, his customer. If at the time of the sale A, for a separate charge which is added to the sales price of the set and which is not greater than 20 percent of the total sales price, provides a 3-year service contract on only that television set, the service contract is a related service agreement. However, if A does not sell the service contract to B contemporaneously with the sale of the television set, as would be the case if the service agreement were entered into after the sale of the set were completed, or if the service contract includes services for a television set in addition to the one then sold by A to B, the service contract is not an agreement for a related service.

Example (2). C, an automobile dealer, at the time of the sale by C of an automobile to D, agrees to make available to D driving instructions furnished by the M driving school, the cost of which is included in the sale price of the automobile and is not greater than 20 percent of the total sales price. C also agrees to pay M for the driving instructions furnished to D. Since C's agreement with D to make available driving instructions is incidental to the sale of the automobile, is made contemporaneously with the sale, and is charged for as part of the sales price of the automobile, it is an agreement for a related service. In contrast, however, because M's agreement with C is not an agreement between the dealer in property and the customer, M's agreement with C to provide driving instructions to C's customers is not an agreement for a related service.

(b) *Incorporation by reference of section 166(c) rules.* A reserve for section 166(f)(1)(A) guaranteed debt obligations must be established and maintained under the rules applicable to the reserve for bad debts under section 166(c). For example, the rules in § 1.166-4(b), relating to what constitutes a reasonable addition to a reserve for bad debts and to correction of errors in prior estimates, apply to a reserve for section 166(f)(1)(A) guaranteed debt obligations as well.

(c) *Special requirements.* Any reserve for section 166(f)(1)(A) guaranteed debt obligations must be established and maintained separately from any reserve or other debt obligations. In addition, a taxpayer who charges off direct debts when they become worthless in whole or in part rather than maintaining a reserve for such obligations may not maintain a reserve for section 166(f)(1)(A) guaranteed debt obligations in the same trade or business.

(d) *Requirement of statement.* A taxpayer who uses the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations must attach to his return for each taxable year and for each trade or business for which the reserve is maintained a statement showing—

(1) The total amount of these obligations at the beginning of the taxable year;

(2) The total amount of these obligations incurred during the taxable year;

(3) The amount of the initial balance of the suspense account, if any, established with respect to these obligations;

(4) The balance of the suspense account, if any, at the beginning of the taxable year;

(5) The adjustment, if any, to that account;

(6) The adjusted balance, if any, at the close of the taxable year;

(7) The reconciliation of the beginning and closing balances of the reserve for these obligations and the computation of the addition to the reserve; and

(8) The taxable year for which the reserve for these obligations was established.

(e) *Computation of opening balance—* (1) *In general.* The opening balance of a reserve for section 166(f)(1)(A) guaranteed debt obligations established for the first taxable year for which a taxpayer maintains such a reserve shall be determined as if the taxpayer had maintained such a reserve for the taxable years preceding that taxable year. The amount of the opening balance may be determined under the following formula:

$$OB = CG \times \frac{SNL}{SG}$$

where—

OB = the opening balance at the beginning of the first taxable year

CG = the amount of these obligations at the close of the last preceding taxable year

SG = the sum of the amounts of these obligations at the close of the five preceding taxable years

SNL = the sum of the amounts of net losses arising from these obligations for the five preceding taxable years

(2) *Example.* The following example applies to paragraph (e) (1) of this section.

Example. For 1977, A, a dealer in automobiles who uses the calendar year as the taxable year, adopts in accordance with this section the reserve method of treating section 166 (f) (1) (A) guaranteed debt obligations. A's first year in business as an automobile dealer is 1973. For 1972, 1973, 1974, 1975, and 1976, A's records disclose the following information with respect to these obligations:

Year	Obligations outstanding at close of year	Gross losses from these obligations	Recoveries from these obligations	Net losses from these obligations
1972	$0	$0	$0	$0
1973	780,000	9,700	1,000	8,700
1974	795,000	8,900	1,050	7,850
1975	850,000	8,850	850	8,000
1976	820,000	9,300	1,400	7,900
Total	3,245,000	36,750	4,300	32,450

The opening balance for 1977 of A's reserve for these obligations is $8,200, determined as follows:

$$\$8,200 = \$820,000 \times \frac{\$32,450}{\$3,245,000}$$

(3) *More appropriate balance.* A taxpayer may select a balance other than the one produced under paragraph (e)(1) of this section if it is more appropriate, based upon the taxpayer's actual experience, and in the event the taxpayer's return is examined, if the balance is approved by the district director.

(4) *No losses in the five preceding taxable years.* If a taxpayer is in the taxpayer's first taxable year of a particular trade or business, or if the taxpayer has no losses arising from section 166(f)(1)(A) guaranteed debt obligations in a particular trade or business for any other reason in the five preceding taxable years, then the taxpayer's opening balance is zero for that particular trade or business.

(5) *Where reserve method was used before October 22, 1965.* If for a taxable year ending before October 22, 1965, the taxpayer maintained a reserve for bad debts under section 166(c) which included guaranteed debt obligations described in section 166(f)(1)(A), and if the taxpayer is allowed a deduction referred to in paragraph (g)(2) of this section on account of those obligations, the amount of the opening balance of the reserve for section 166(f)(1)(A) guaranteed debt obligations for the taxpayer's first taxable year ending after October 21, 1965, shall be an amount equal to that portion of the section 166(c) reserve at the close of the last taxable year which is attributable to those debt obligations. The amount of the balance of the section 166(c) reserve for the taxable year shall be reduced by the amount of the opening balance of the reserve for those guaranteed debt obligations.

(f) *Suspense account*—(1) *Zero opening balance cases.* No suspense account shall be maintained if the opening balance of the reserve for section 166(f)(1)(A) guaranteed debt obligations under section 166(f)(3) is zero.

(2) *Example.* The following example applies to section 166(f)(4)(B), relating to adjustments to the suspense account:

Example. In 1977, A, an individual who operates an appliance store and uses the calendar year as the taxable year, adopts the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations. The initial balance of A's suspense account is $8,200. At the close of 1977, 1978, 1979, and 1980, the balance of A's reserve for these obligations is $8,400, $8,250, $8,150, and $8,175, respectively, after making the addition to the reserve for each year. The adjustments under section 166(f)(4)(B) to the suspense account at the close of each of the years involved are as follows:

(1) Taxable year	1977	1978	1979	1980
(2) Closing reserve account balance	$8,400	$8,250	$8,150	$8,175
(3) Opening suspense account balance	8,200	8,200	8,200	8,150
(4) Line (2) less line(3)	200	50	(50)	25
(5) Adjustment to suspense account balance	0	0	(50)	25
(6) Closing suspense account balance (line 3 plus line 5)	8,200	8,200	8,150	8,175

(g) *Effective date*—(1) *In general.* This section is generally effective for taxable years ending after October 21, 1965.

(2) *Transitional rule.* Section 2(b) of the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151) allows additions to section 166(c) bad debt reserves in earlier taxable years on account of section 166(f)(1)(A) guaranteed debt obligations to be deducted for those earlier taxable years. Paragraphs (c), (d), (e), and (f) of this section do not apply in determining whether a deduction is allowed under section 2(b) of the Act. See Rev. Rul. 68-313 (1968-1C.B. 75) for rules relating to that deduction.

Par. 4. Paragraph(a)(1)(ii) of § 1.381(c)(4)-1 is amended by inserting a new sentence between the second and third sentences. The new sentence reads as follows:

§ 1.381(c)(4)-1 Method of accounting.

(a) *Carryover requirement*—(1) *General rule.* * * *

(ii) * * * The acquiring corporation shall also take into its accounts the dollar balance of that account of the distributor or transferor corporation which represents a suspense account established by the distributor or transferor corporation under section 166(f)(4) in taxable years ending on or before the date of distribution or transfer. * * *

Jerome Kurtz,
Commissioner of Internal Revenue.

[FR Doc. 80-20780 Filed 7-10-80; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Grant Period; Reclamation of Eligible Land and Water; Receipt of Petition for Rulemaking and Request for Public Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C.

ACTION: Notice of receipt of petition for rulemaking and request for public comments.

SUMMARY: OSM seeks public comment on a petition for certain amendments to regulations found in 30 CFR 886.13 relating to the funding period for grants to States to support reclamation of eligible land and water and other activities under approved State Reclamation Plans. The petition proposes regulation changes that would allow, in certain specified situations, grant funding periods for projects to be extended beyond the present 3 year limit established in 30 CFR 886.13.

DATES: Comments must be received by August 11, 1980, at the address below by no later than 5 p.m.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044; or be hand delivered to: Office of Surface Mining, Room 135, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Office of Surface Mining, Abandoned Mine Lands, Division of State and Indian Programs, Washington, D.C. 20245, (202) 343-4530.

SUPPLEMENTARY INFORMATION: On October 25, 1978, the Secretary of the

Interior promulgated the final rules for the Abandoned Mine Land Reclamation Program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C 2101 *et seq.* (SMCRA). The rules included procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the plan as approved. A petition to amend 30 CFR 886.13 has been submitted to OSM by Ed Herschler personally and as Governor on behalf of the State of Wyoming. A copy of this petition is appended to this notice as Appendix A. The petition published herein seeks to amend regulations related to the grant funding period for grants to States having an approved State Reclamation Plan under Title IV of Pub. L. 95-87 as set forth in 30 CFR 886.13.

The basic position of the petitioner is that rules and regulations currently in effect result in unnecessary idling of Abandoned Mine funds despite Congress' intent for their expeditious use, and despite the need by the States and localities for assistance in communities impacted by coal development.

The petitioner states that the existing system forces States to wait until the last three year grant period covering the reclamation priorities before any coal development impact assistance money becomes available. The petitioner continues that this system would be objectionable for any State that has limited, but long-term reclamation work to accomplish, and communities presently suffering from increased coal develoment. The petitioner concludes that the proposal establishes a method to extend the grant funding period in a manner consistent with the Surface Mining Act, while preserving the Office's ability to evaluate the administration of State Reclamation Plans. The petitioner proposes amending § 886.13 to address the concerns cited.

Petitions To Initiate Rulemaking

This notice is published pursuant to 30 CFR 700.12 seeking comments from the public on the petition. Following receipt and consideration of public comments, OSM will issue the petitioner a written decision either granting or denying the petition. If the petition is granted, OSM will inititate a rulemaking proceeding, during which the public will be afforded another opportunity to comment.

Public Comment Period

The comment period on the petition will extend until August 11, 1980. All written comments must be received at the addresses given above by 5 p.m. on August 11, 1980. Comments received after that hour will not be considered or included in the administrative record on this petition. The Office cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record on this petition.

Availability of Copies

In addition to its publication here as Appendix A, copies of the petition and copies of 30 CFR 886.13 are available for inspection and may be obtained at the following offices:

OSM Headquarters, Department of the Interior, South Building, Room 135, 1951 Constitution Avenue, N.E., Washington, D.C. 20240; (202) 343-4728

OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301; (304) 432-8125

OSM Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902; (615) 637-8060

OSM Region III, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Ind. 46204; (317) 269-2609

OSM Region IV, 818 Grand Avenue, Scarritt Building, 5th Floor, Kansas City, Mo. 64106; (913) 758-2193

OSM Region V, Post Office Building, 1823 Stout Street, Denver, Colo. 80202, (303) 837-5511Q04

Dated: July 7, 1980.

Walter N. Heine,

Director.

Petition

In the matter of Ed Herschler, personally and on behalf of the State of Wyoming: petition to initiate rulemaking.

Pursuant to the provisions of 201(g) of the Surface Mining Control and Reclamation Act of 1977 (hereinafter, the Act), 30 U.S.C. 1201 *et seq.* (Supp. 1978) and the requirements of 30 CFR 700.12, I, Ed Herschler, personally and on behalf of the State of Wyoming, petition the Director of the Office of Surface Mining Reclamation and Enforcement to initiate a proceeding for the amendment of regulations found at 30 CFR 886.13 related to the grant funding period for grants to States having an approved State Reclamation Plan under Title IV of Pub. L. 95-87. This petition summarizes the object of the proposed rulemaking proceeding and provides a reasonable basis on facts and law for amendment of the regulation.

Reasons Why This Petition Should Be Granted

1. Throughout the development of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (the Act), Congress was acutely aware of, and consistently provided for the utilization of impact assistance funds. See for example, H.R. Rep. 93-1072, 93rd Cong. 2nd Sess. 118 (1974) (to accompany H.R. 11500), S. Rep. 94-28, 94th Cong. 1st Sess. 38 (1975) (to accompany S. 7), H.R. Rep. 94-45, 94th Cong. 1st Sess. 13 (1975) (to accompany H.R. 25), H.R. Rep. 94-896, 94th Cong., 2d Sess. 89 (1976) (to accompany H.R. 9925), H.R. Rep. 94-1445, 94th Cong. 2d Sess. 109 (1976) (to accompany H.R. 13950).

2. The result of Congress' attention to this matter appears in the Act as Section 402(g)(2), 30 U.S.C. Sec. 1232(g)(2):

Where the Governor of a State or the head of a governing body of a tribe certifies that (i) objectives of the fund set forth in sections 403 and 409 have been achieved, (ii) there is a need for construction of specific public facilities in communities impacted by coal development, (iii) impact funds which may be available under provisions of the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1976, Pub. L. 94-565 (90 Stat. 2662), are inadequate for such construction, and (iv) the Secretary concurs in such certification, then the Secretary may continue to allocate all or part of the 50 per centum share to that State or tribe for such construction: *Provided, however,* That if funds under this subparagraph (2) have not been expended within three years after their allocation, they shall be available for expenditure in any eligible area as determined by the Secretary.

3. The State directed an inquiry to the Secretary of Interior concerning the use of Abandoned Mine Land (AML) funds for community impact assistance. The purpose of the inquiry was to determine the earliest possible time, consistent with the Act, that the State may use AML funds to construct public facilities in communities impacted by coal development.

4. The timing issue for the use of AML funds for impact assistance is significant for Wyoming. The State has only a limited number of eligible lands and water to address under section 403 of the Act. In addition, the State has relatively few voids, tunnels, shafts, entryways, or adverse surface impacts resulting from mining operations which qualify for reclamation under section 409 of the Act. However, Wyoming's communities are presently suffering from increased coal development. Total State production in 1974, the year before I took office, was about 20 million tons. By 1978, Wyoming production had tripled to about 60 million tons. By 1985, our most conservative State projections indicate production of 140 million tons, despite a national softness in the coal market. While this is only about half of what Project Independence originally expected of us, it will be more than enough to cause significant community impact.

5. The critical issue for the resolution of the timing problem lies in the interpretation of when the "objectives of the fund set forth in sections 403 and 409 *have been achieved.*" Section 402(g)(2) (emphasis added). Does this statutory precondition for the expenditure of funds on impact assistance require the actual completion of all reclamation projects under sections 403 and 409, or may the objectives of those sections be deemed complete at any earlier point in time (and if so, when)?

6. Based upon discussions with and information obtained from the Department of

Interior and its Solicitors, it is the State's best estimation that the reclamation objectives are achieved, not at the completion of all reclamation projects, but rather when the AML funds are obligated under a Federal-State grant agreement for expenditure by the State on projects which address all the section 403 and 409 reclamation objectives. This conclusion rests on the following reasoning.

7. The specific wording of section 402(g)(2) of the Act is couched in terms of the achievement of objectives. Although it is not clear what point in time would constitute accomplishment of the fund's objectives, it is important to note that Congress did not refer specifically to the completion of all reclamation projects. Because a more indefinite term was used, it is arguable that the Secretary has some flexibility to determine when the objectives of the fund have been accomplished.

8. The legislative history provides no clear guidance to the resolution of the timing issue. An inflexible reading of the Senate floor debate and the Conference Committee report suggests that Congress intended for all reclamation projects to be completed prior to allocation of impact assistance funds. This suggestion is conveyed through such sentences as: (emphasis added.)

"[States] must first *take care of* abandoned, unreclaimed mines * * *" Domenici, 123 Cong. Rec. 8114 (1977).

"* * * [T]he State can decide to use it [AML funds] for purposes of social impact * * * *after* the orphaned abandoned mining lands *are reclaimed* * * *." Melcher, *id.* at 8116.

"[*A*]*fter we have reclaimed* our orphaned lands * * * we want to spend money left over for something else rather than have it revert to the common fund." Metcalf, *id.* at 8115.

"Once all the eligible lands in a State * * * *have been reclaimed,* all voids filled and all tunnels sealed, the Secretary has discretionary authority to allow use of all or part of this 50 percent for construction of public facilities in communities impacted by coal development." H. Conf. Rept. No. 95-493, 95th Cong. 1st Sess. 99 (1977).

9. It is doubtful, however, that Congress intended for all reclamation projects to be completed before impact assistance may be addressed. Such a requirement would contradict other statutory provisions directed to expeditious utilization of the AML funds.

10. Section 402(g)(2) of the Act provides that "the Secretary *may continue* to allocate all or part of the 50 per centum share * * * for [public facility] construction."

This provision alone suggests an intent to provide for continuity in the use of the AML funds, with no delay between commitment of funds for the reclamation projects and completion of the actual work.

11. Section 402(g)(2) of the Act provides that "if [AML] funds * * * have not been expended within three years after their allocation, they shall be available for expenditure in any eligible area as determined by the Secretary." This provision clearly requires expeditious utilization of AML funds after the funds have been allocated (which occurs at the end of the fiscal year in which they have been collected). 30 CFR 872.11(b)(2). This expeditious utilization could not be accomplished if the State were required to wait for the actual completion of all reclamation work before it could spend the allocated AML funds on impact assistance.

12. A more serious problem arises, however, with the fact that, as the reclamation work comes down to the last remaining section 403 and 409 projects, more money is likely to be allocated to a State than spent completing these last projects. This gives rise to the possibility that funds, not yet available for expenditure on impact assistance would revert back to the Federal government. Such an interpretation of when objectives are "achieved" flies in the face of the expressed intent to make the money available to the State rather than have it revert to the common fund. Metcalf, 123 Cong. Rec. 8115 (1977).

12. Based on the above, the State concludes that the reclamation objectives are achieved, not at the completion of the reclamation projects, but rather when sufficient funds are obligated under the annual grant procedures in Section 405 to accomplish all remaining reclamation projects as expeditiously as practicable.

13. The grant procedures, as implemented by 30 CFR Subchapter R (Parts 870-888), unduly delay the obligation of Federal funds to accomplish all remaining reclamation projects.

14. The grant procedures requires a grant application from the State listing the individual projects to be funded. 30 CFR 886.15(b)(1). However, the only costs which can be funded are those covering the benefit attributable to the grant funding period. 30 CFR 886.21(d). The grant funding period covers three years. 30 CFR 886.13. Therefore, only three years funding for projects may be approved in any one annual grant agreement. 43 FR 49939, comment 2 (Oct. 25, 1978). As written, funding may not be approved in the agreement for the life of the proposed project.

15. The above discussed grant procedures and funding period affect the availability of impact assistance money. The three-year amount included in the grant agreement constitutes the full amount of AML funds obligated by the Federal government for expenditure by the State. 30 CFR 886.16(d). Therefore, the State will have to wait until the last three-year segment in order that sufficient funds will be obligated to accomplish the remaining reclamation projects. This delay in funding is substantially similar to the delay which would result if section 402(g)(2) is construed to require the actual completion of the last reclamation project. The argument against such an interpretation appears above, and is equally applicable here. The delay would result in unnecessary idling of AML funds despite Congress' intent for their expeditious use and despite the need by the states and localities for impact assistance.

The Proposed Amendment

16. The State proposes the following amendment to 30 CFR 886.13:

30 CFR 886.13 *Grant period.*

(*a*). The grant funding period shall not exceed 3 years. However, the grant period for administrative costs of the authorized agency shall be for 1 year.

(*b*) Notwithstanding the above, the grant funding period may extend beyond three years in order to obligate Federal funds where a state submits and the Regional Director approves a grant application covering the total costs of all projects, including multiphased projects, which are necessary to achieve all the 403 and 409 objectives and—

(*i*) This cost does not exceed 50 percent of the reclamation fees collected from within the state at the time of the grant application;

(*ii*) The state will have contractual commitments to complete, as expeditiously as practicable, all projects to be funded; and

(*iii*) The certification of section 402(g)(2) of the Act has been made for the expenditure of money to construct public facilities in communities impacted by coal development.

17. This amendment will prevent the delay in impact assistance funding for States that otherwise meet the preconditions of section 402(g)(2) and need the AML funds to relieve community impact caused by increased coal development.

18. Furthermore, the amendment will not disrupt OMS's three-year oversight ability presently accomplished by the existing grant funding period. Pursuant to proposed 30 CFR 886.13(b)(i), only those states that have very limited section 403 and 409 reclamation objectives can utilize the extended grant period provision. In essence, the provision would only apply to a State which could submit a grant application and demonstrate that the total costs of all proposed 403 and 409 reclamation projects is less than its share of the AML fund that has been collected from within the State at the time of the grant application. See 30 CFR 872.11(b)(2).

19. Finally, the amendment is consistent with the Act and promotes, in the fullest manner, Congress' apparent policy and objectives of section 402(g)(2).

Dated this 14th day of April, 1980.

Respectfully submitted,

Ed Herschler.

Ed Herschler on behalf of the State of Wyoming.

[FR Doc. 80-20673 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Ch. VII

Permanent Regulatory Program—Availability and Request for Comment on Proposed Lists of Provisions in State Programs Based on Suspended and Remanded Federal Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Announcement of availability and request for public comment.

SUMMARY: On or before March 3, 1980, the States listed below submitted to the Department of the Interior their proposed permanent regulatory programs under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA). The submission is intended to implement requirements found in 30 CFR Chapter VII, which contains the permanent program rules issued by the Secretary of the Interior.

In the course of a lawsuit challenging the Secretary's rules, certain provisions were suspended or remanded pending further rulemaking. On May 16, 1980, the court hearing the case ordered that the Secretary must disapprove in programs being considered all State provisions incorporating suspended or remanded Federal rules. On June 16, 1980, the Secretary filed a motion requesting the court to stay this decision. This notice invites public comment on the Secretary's tentative determination identifying provisions in the following State programs which incorporate suspended or remanded Federal rules: Alabama, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, and West Virginia. The determinations are available at the addresses listed in the Supplementary Information for each State.

DATES: The hearing dates and comment closing dates for each State are set forth in Supplementary Information below.

ADDRESSES: The hearing locations, and all other applicable addresses are set forth in Supplementary Information below.

FOR GENERAL INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240; telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Challenges to the Secretary's permanent program regulations were brought by representatives of industry, two States and several environmental groups in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144).

In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the Federal Register on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77,447-77,454) and January 30, 1980 (45 FR 6913). In two opinions the court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. A list of all the suspended and remanded regulations is set forth in the notice concerning the Louisiana permanent regulatory program published by OSM in the Federal Register on July 7, 1980 (45 FR 45604).

In its May 16, 1980, opinion, the court ordered the Secretary to affirmatively disapprove any regulation in a State program which incorporates a suspended or remanded regulation. Although the Secretary intends to appeal that portion of the court's opinion, he intends to comply with it pending its modification on appeal or as a result of his Application for Stay filed June 16, 1980.

OSM has completed an initial review of State program submissions and has identified the provisions proposed for disapproval and the proposed extent of disapproval. Several states which submitted State programs are not discussed in this notice. Separate notices on the subject of suspended and remanded regulations are being published for those States. List of provisions for the remaining States are available at the addresses listed below and will be available at the public hearing site(s) relative to the substantative adequacy of the proposed regulatory program under SMCRA for each State program.

Each list identifies provisions the Secretary would disapprove from each State program if he approves the remainder of the programs and sets forth the extent to which each of the provisions would be disapproved. The public is invited to comment on the completeness of the lists and the appropriateness of the proposed extent of disapproval for each provision.

Copies of the respective State program submissions, the opinions of the Court in the lawsuit entitled *In Re: Permanent Surface Mining Regulation Litigation (Civil Action No. 79-1144)*, the list of suspended and remanded Federal regulations resulting from the lawsuit, and the list of provisions for each State program which OSM has identified for disapproval and the proposed extent of disapproval as a result of the lawsuit are available at the addresses listed below as well as public hearing sites and dates:

Alabama

DATES: A public hearing to review the substance of the Alabama program submission will be held at 7:30 p.m. on July 24, 1980, at the address listed below. Comments from the public must be received on or before July 28, 1980, to be considered in the Secretary's initial decision on the Alabama proposed State program.

ADDRESSES: The public hearings will be held at the Holiday Inn, 1400 U.S. Hwy. 78 Bypass, Jasper, Alabama. Written comments should be sent to: Mr. David Short, Regional Director, Office of Surface Mining, 530 Gay St., SW, Suite 500, Knoxville, Tennessee 37902 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee.

Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama.

Alabama Surface Mining Reclamation Commission, 100 Third Street, Fort Payne, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone: (615) 637-8060.

Colorado

DATES: A public hearing to review the substance of the Colorado program submission will be held at 10:00 a.m., July 25, 1980, at the address listed below. Comments from members of the public must be received on or before 9:00 a.m., July 28, 1980, to be considered in the Secretary's initial decision on the Colorado proposed State program.

ADDRESSES: The public hearing will be held at the Denver Public Library, 1357 Broadway, in Denver, Colorado.

Written comments should be sent to Mr. Donald A. Crane, Regional Director, Office of Surface Mining, Department of the Interior, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202, or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, Region V, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202.

Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Sullivan, Public Information Officer, Office of Surface Mining—Region V, 1020—15th Street, Denver, Colorado 80202; telephone: (303) 837-4731.

Illinois

DATES: A public hearing to review the substance of the Illinois program

submission will be held at 1:00 p.m. on July 24, 1980, and on July 25, 1980, at the addresses listed below. Comments from the public must be received on or before 4:30 p.m., July 30, 1980, to be considered in the Secretary of the Interior's decision on the proposed Illinois regulatory program.

ADDRESSES: The public hearing will be held at the following locations:

On July 24, 1980, at the Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62703.

On July 25, 1980, at the Holiday Inn, I–57 at Illinois 13, Marion, Illinois 62959.

Written comments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Region III, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Region III, Fifth Floor, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706.

Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, Route 6, Box 140A, Marion, Illinois 62959.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Furman, Assistant Regional Director, Office of Surface Mining, Fifth Floor, Room 527, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; telephone (317) 269–2629.

Indiana

DATES: Public hearings to review the substance of the Indiana program submission will be held at 1:00 p.m. These hearings will be held in Indianapolis, Indiana, on July 23, 1980, and Evansville, Indiana, on July 24, 1980, at the addresses listed below. Comments from the public must be received on or before 4:30 p.m., July 28, 1980, to be considered in the Secretary of the Interior's decision on the proposed Indiana regulatory program.

ADDRESSES: The public hearings will be held at:

Holiday Inn Downtown, 500 West Washington Street, Indianapolis, Indiana 46204.

Ramada Inn, 4101 Highway 41 North Evansville, Indiana 47711.

Written comments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Region III, Fifth Floor, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

Indiana Division of Reclamation, Department of Natural Resources, 309 West Washington Street, Suite 201, Indianapolis, Indiana 46204.

Office of Surface Mining, District Office, U.S. Postal Service Building, 101 N.W. 7th Street, Evansville, Indiana 47708.

Office of Surface Mining, Field Office, R.R. 31, Box 508, Terre Haute, Indiana 47803.

Indiana Division of Reclamation, Reclamation Field Office, 101 West Main, Jasonville, Indiana 47438.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Furman, Assistant Regional Director, Office of Surface Mining, Fifth Floor, Room 527, 46 East Ohio Street, Indianapolis, Indiana 46204; telephone: (317) 269–2629.

Iowa

DATES: A public hearing to review the substance of the Iowa program submission will be held from 4:00 p.m. to 7:00 p.m. on July 17, 1980, at the address listed below. Comments from the public must be received on or before 4:30 p.m., July 24, 1980, to be considered in the Secretary of the Interior's decision on the proposed Iowa regulatory program.

ADDRESSES: The public hearing will be held at the Holiday Inn, I–235 and Sixth Avenue, Des Moines, Iowa. Written comments should be sent to: Raymond L. Lowrie, Regional Director, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Iowa Department of Soil Conservation, Mines & Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, Scarritt Bldg., 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374–3920.

Kansas

DATES: A public hearing to review the substance of the program submission will be held from 4:00 p.m. to 7:00 p.m. on July 14, 1980, at the address listed below. Comments from the public must be received on or before 4:30 p.m., July 21, 1980, to be considered in the Secretary of the Interior's decision on the proposed regulatory program.

ADDRESSES: The public hearing will be held at the Pittsburg Holiday Inn, Highway 69, Pittsburg, Kansas.

Written comments should be sent to: Raymond L. Lowrie, Regional Director, Office of Surface Mining, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Region IV, 5th Floor Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Mined-Land Office, 107 West 11th Street, Pittsburg, Kansas.

Kansas Corporation Commission, Legal Office, 4th Floor, State Office Building, 915 Harrison, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, 818 Grand Avenue, Scarritt Bldg. Kansas City, Missouri 64106, Telephone: (816) 374–3920.

Kentucky

DATES: Public hearings to review the substance of the Kentucky program submission will be held at 7:30 p.m. on July 22 and 23, 1980, at the addresses listed below. Comments from the public must be received on or before 4:30 p.m., July 28, 1980, to be considered in the Secretary of the Interior's decision on the proposed Kentucky regulatory program.

ADDRESSES: The public hearings will be held at the Ramada Inn, Ramada Drive, Madisonville, Kentucky, on July 22 and at the Hazard Community College Auditorium, Highway 15, Hazard, Kentucky on July 23. Written comments should be sent to: David C. Short, Regional Director, Office of Surface Mining, 5300 Gay Street SW, Suite 500, Knoxville, TN 37902 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Administrative Record Room, Office of Surface Mining—Region II, 530 Gay St., SW, Suite 500, Knoxville, Tennessee.

Bureau of Surface Mining, Reclamation and Enforcement, Capital Plaza Tower, 6th Floor, Frankfort, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, Old TB Facility, Laffoon Street, Madisonville, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, 1632 East Cumberland Avenue, Middlesboro, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, 213 Lovern Street, Hazard, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, 431 South Lake Drive, Prestonburg, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, 165 South Mayo Trail, Pikeville, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement (Near Intersection of East 80, Daniel Boone Parkway and Hwy. 25), London, Kentucky.
Bureau of Surface Mining, Reclamation and Enforcement, 620 West Main Street, Grayson, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902; telephone: (615) 637–8060.

Maryland

DATES: A public hearing to review the substance of the Maryland program submission will be held from 1:00 to 9:00 pm on July 17, 1980, at the address listed below. The hearing will recess from 4:00 to 7:00 p.m. Comments from members of the public must be received on or before July 23, 1980, to be considered in the Secretary's initial decision on the proposed State program.

ADDRESSES: The public hearing will be held at Beall High School Auditorium, Rt. 40, E. Main Street, Frostburg, Maryland. Written comments should be sent to: Office of Surface Mining, Region I, Attention: Maryland Administrative Record, 950 Kanawha Boulevard, East, Charleston, WV 25301, or may be hand delivered to the Regional Office. Previously identified information is available at the following addresses:

Office of Surface Mining, Region I, 950 Kanawha Boulevard, Charleston, WV 25301.
Office of Surface Mining, U.S. Department of the Interior, Morgantown Field Office, Federal Building Room 229, Morgantown, WV 26505, (304) 291–5821.
Department of Natural Resources, Tawes State Office Building, Annapolis, MD 21401, (301) 269–2261.
Bureau of Mines, P.O. Drawer C, Westernport, Maryland 21562, (301) 359–3057.

FOR FURTHER INFORMATION CONTACT: Mr. David Halsey, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, telephone (304) 344–2331.

New Mexico

DATES: A public hearing to review the substance of the New Mexico program submission will be held at 1:00 p.m. and 7:30 p.m. on July 23, 1980, at the address listed below. Comments from members of the public must be received on or before the close of business on July 28, 1980, to be considered in the Secretary's initial decision on the New Mexico proposed State program.

ADDRESSES: The public hearing will be held in New Mexico at the Energy and Minerals Department, Bureau of Mine Inspection, 2340 Menaul, N.W., Albuquerque, New Mexico. Written comments should be sent to Mr. Donald A. Crane, Regional Director, Office of Surface Mining, Department of the Interior, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, or may be hand delivered to the Regional Director. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, telephone: (303) 837–4731.
Energy and Minerals Department, Division of Mining and Minerals, First Northern Plaza, East, Room 200, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Sylvia Sullivan, Public Information Officer, Office of Surface Mining, Region V, 1020 15th Street, Denver, Colorado 80202, telephone: (303) 837–4731.

North Dakota

DATES: A public hearing to review the substance of the North Dakota program submission will be held at 4:00 p.m. and 7:30 p.m. on July 22, 1980, at the address listed below. Comments from members of the public must be received on or before July 25, 1980, at 4:30 p.m. to be considered in the Secretary's initial decision on the North Dakota proposed State program.

ADDRESSES: The public hearing will be held at the large auditorium, State Highway Building, Capitol Grounds, Bismark, North Dakota. Written comments should be sent to Mr. Donald A. Crane, Regional Director, Office of Surface Mining, Department of the Interior, Brooks Towers, Room 5010, 1020–15th Street, Denver, Colorado 80202, or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Department of Interior, Region V, Brooks Towers, Room 5010, 1020 15th Street, Denver, Colorado 80202.
Reclamation Division, Public Service Commission, Bismark, North Dakota, 58505.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Sullivan, Public Information Officer, Office of Surface Mining—Region V, 1020—15th Street, Denver, Colorado, 80202; telephone (303) 837–4731.

Ohio

DATES: Public hearings to review the substance of the Ohio program submission will be held at 1:00 p.m. These hearings will be held in St. Clairsville, Ohio, on July 21, 1980, and Columbus, Ohio, on July 22, 1980, at the addresses listed below. Comments from the public must be received on or before 4:30 p.m., July 26, 1980, to be considered in the Secretary of the Interior's decision on the proposed Ohio regulatory program.

ADDRESSES: The public hearings will be held at:

St. Clairsville City School, 108 Woodrow Avenue, St. Clairsville, Ohio 43950.
Holiday Inn, 1212 East Dublin-Granville Road, Columbus, Ohio 43229.

Written comments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Region III, Fifth Floor, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.
Ohio Division of Reclamation, Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224.
Office of Surface Mining, District Office, 1100 Brandywine Boulevard, Building D, Zanesville, Ohio 43701.
Office of Surface Mining, Field Office, 150 West Main Street, St. Clairsville, Ohio 43950.
Ohio Division of Reclamation, District II, 1894 East High Street, New Philadelphia, Ohio 44663.

Ohio Division of Reclamation, District IV, Technical Building, 840 Airport Road, Route 4, Zanesville, Ohio 43701.
Ohio Division of Reclamation, District V, Road #1, National Road, St. Clairsville, Ohio 43950.
Ohio Division of Reclamation, District VI, 360 East State Street, Athens, Ohio 45701.
Ohio Division of Reclamation, District VI, 36 Portsmouth Street, Jackson, Ohio 45640.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Furman, Assistant Regional Director, Office of Surface Mining, Fifth Floor, Room 527, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; telephone: (317) 269–2629.

Oklahoma

DATES: A public hearing to review the substance of the Oklahoma program submission will be held from 4:00 p.m. to 7:00 p.m. on July 15, 1980, at the address listed below. Comments from the public must be received on or before 4:30 p.m., July 22, 1980, to be considered in the Secretary of the Interior's decision on the proposed Oklahoma regulatory program.

ADDRESSES: The public hearing will be held at the Holiday Inn, 800 S. 32nd, Muskogee, Oklahoma 74401. Written comments should be sent to Raymond L. Lowrie, Regional Director, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, or may be hand delivered to the Regional Office. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Region IV—5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.
Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; telephone: (816) 374–3920.

Pennsylvania

DATES: Public hearings to discuss the substance of the Pennsylvania submission will be held on July 14 and 15, 1980, at the Sheraton Inn Ballroom, 1545 Wayne Avenue, Indiana, Pennsylvania, and at the Forum, corner of Commonwealth Avenue and Walnut Street, Harrisburg, Pennsylvania, respectively. Both hearings will begin at 1:00 p.m. and last until 9:00 p.m., or until all discussion has been completed, with an intermission from 4:00 p.m. to 7:00 p.m. comments from members of the public must be received on or before July 21, 1980, to be considered in the Secretary's initial decision on the Pennsylvania proposed State program. Written comments should be sent to: Office of Surface Mining, Region I, Attention: Pennsylvania Administrative Record, 950 Kanawha Boulevard, E, Charleston, West Virginia 25301 or may be hand delivered to the Regional office. Previously identified information is available at the following locations:

Office of Surface Mining, Region I Office, 950 Kanawha Blvd Blvd., East, Charleston, W VA. 25301; telephone: (304) 342–8125.
Office of Surface Mining, Johnstown District Office, Penn Traffic Bldg., 3rd Floor, 319 Washington Street, Johnstown, PA 15901; telephone: (814) 533–4223.
Office of Surface Mining, DuBois Field Office, 107 N. Brady Street, P.O. Box 647, DuBois, PA 15801; telephone: (814) 371–1240
Office of Surface Mining, Wilkes Barre District Office, 20 N. Pennsylvania Avenue, Room 3107, Wilkes Barre, PA 18701; telephone: (717) 823–0563.
Office of Surface Mining, Clarion Field Office, Clarion State College, Clarion, PA 16214; telephone: (814) 226–4230.
Office of Surface Mining, Indiana Field Office, North 8th & Waters Streets, P.O. Box 185, Indiana, PA 15701; telephone: (412) 463–0216.
Office of Surface Mining, Somerset Field Office, 651 S. Central Avenue, Morocco Building, Somerset, PA 15501; telephone: (814) 443–4844.
Office of Surface Mining, Clearfield Field Office, Multi-Service Center, 950 Leonard Street, Clearfield, PA 16830; telephone (814) 765–1503.
Department of Environmental Resources, Williamsport Regional Office, 736 West Fourth Street, Williamsport, PA 17701; telephone (717) 326–2681.
Office of Surface Mining, Washington Field Office, 75 East Maiden Street, Washington, PA 15301; telephone (412) 228–4710.
Department of Environmental Resources, 10th Floor, Fulton Bank Bldg., Third & Locust Streets, Harrisburg, PA. 17120; telephone (717) 787–4686.
Department of Environmental Resources, Pittsburgh Regional Office, The Kosman Building, Pittsburgh, PA 15222; telephone (412) 565–5023.
Department of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335; telephone (814) 724–8557.
Department of Environmental Resources, Wernersville Regional Office, State Hospital Bldg. 10, Wernersville, PA 19565; telephone (215) 670–0301.
Department of Environmental Resources, Hawk Run District Office, Hawk Run Water Treatment Plant, Hawk Run, PA 16840; telephone (814) 342–5399.
Department of Environmental Resources, Wilkes Barre/Kingston Regional Office, 90 East Union Street—2nd Floor, Wilkes Barre, PA 18701; telephone (717) 826–2511.
Department of Environmental Resources, Harrisburg Regional Office, 407 South Cameron Street, Harrisburg, PA 17101; telephone (717) 783–2818.
Department of Environmental Resources, Norristown Regional Office, 1875 New Hope Street, Norristown, PA 19401; telephone (215) 631–2402.
Department of Environmental Resources, Ebensburg District Office, The Prave Building, 122 S. Center Street, Ebensburg, PA 15931; telephone (814) 472–6344.
Department of Environmental Resources, Knox District Office, White Memorial Bldg., Knox, PA 16232; telephone (814) 797–1191.
Department of Environmental Resources, Pottsville District Office, Motor Contracts Building, 108 S. Claude A. Lord Blvd., Pottsville, PA 17901; telephone (717) 622–8181.
Department of Environmental Resources, Greensburg District Office, Armburst Professional Bldg., R.D. No. 2, Greensburg, PA 15601; telephone (412) 925–8115.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Halsey, Assistant Regional Director, Division of State and Federal Programs, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301; telephone: (304) 344–2331.

Tennessee

DATES: A public hearing to review the substance of the Tennessee program submission will be held at 7:30 p.m. on July 21, 1980, at the address listed below. Comments from members of the public must be received on or before July 24, 1980, to be considered in the Secretary's initial decision on the Tennessee proposed State program.

ADDRESSES: The public hearing will be held at the Holiday Inn West, 1315 Kirby Road, Knoxville, Tennessee. Written comments should be sent to David C., Short, Regional Director, Office of

Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902 or may be hand delivered to the Regional office. Previously identified information is available at the following locations:

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 1720 West End Avenue, Nashville, Tennessee.

Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 618 Church Avenue, S.W., Knoxville, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902; telephone: (615) 637–8060.

Utah

DATES: A public hearing to review the substance of the Utah program submission will be held at 1:00 p.m. and 7:30 p.m. on July 21, 1980, at the address listed below. Comments from members of the public must be received on or before the close of business on July 24, 1980, to be considered in the Secretary's initial decision on the Utah proposed State program.

ADDRESSES: The public hearing will be held at the Wildlife Auditorium, 1596 West North Temple, Salt Lake City, Utah. Written comments should be sent to Mr. Donald A. Crane, Regional Director, Office of Surface Mining, Department of the Interior, Brooks Towers, 1020-15th Street, Denver, Colorado 80202, or may be hand delivered to the Regional Director. Previously identified information is available at the following locations:

Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, Region V, Brooks Towers, 1020-15th Street, Denver, Colorado 80202.

Division of Oil, Gas and Mining, Mined Land Reclamation, 1588 West North Temple, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Sylvia Sullivan, Public Information Office, Office of Surface Mining, Region V, 1020 15th Street, Denver, Colorado 80202; telephone: (303) 837–4731.

Virginia

DATES: A public hearing to review the substance of the program submission will be held on July 17, 1980, from 1:00–4:00 p.m. and from 7:00–9:00 p.m. or until all persons wishing to make comments have been heard at the address listed below. Comments from members of the public must be received on or before July 23, 1980, to be considered in the Secretary's initial decision on the proposed State program.

ADDRESSES: The public hearing will be held at Clinch Valley College, Wise, Virginia. Written comments should be sent to: Office of Surface Mining, Region I, Attention: Virginia Administrative Record, 950 Kanawha Boulevard, East, Charleston, WV 25301, or may be hand delivered to the Regional Office. Previously identified information is available at the following addresses:

Office of Surface Mining, Lebanon District Office, Flannagan and Carroll Streets, Lebanon, VA 24266; telephone: (703) 889–4032.

Department of Conservation and Economic Development, 1100 State Office Building, Richmond, VA 23219; telephone: (804) 786–2121.

Buchanan County Public Library, Grundy, VA 24614; telephone: (703) 546–1141.

Office of Surface Mining, Richlands Field Office, Gateway Shopping Center, Highway 460, Richlands, VA 24641; telephone: (703) 964–4022.

The Virginia State Library, Library Building, Richmond, VA 23219; telephone: (804) 786–8929.

Dickenson County Public Library, P.O. Box 650, Clintwood, VA 24228; telephone: (703) 926–6617.

Lee County Public Library, 406 Joslyn Avenue, Pennington Gap, VA 24277; telephone: (703) 546–1141.

Scott County Public Library, P.O. Box 8, Gate City, VA 24251; telephone: (703) 386–3302.

Tazewell County Public Library, Main Street, Tazewell, VA 24651; telephone: (703) 988–2541.

Russell County Public Library, Library Courthouse, Lebanon, VA 24266; telephone: (703) 889–2881.

Wise County Public Library, Ridgefield Acres, Wise, VA 24293; telephone: (703) 328–8061.

Division of Mined Land Reclamation, Drawer U, Big Stone Gap, VA 24219; telephone: (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Boulevard East, Charleston, West Virginia 25301; telephone: (304) 344–2331.

West Virginia

DATES: Public hearings to review the substance of the program submission will be held on July 14 and 15, 1980, at the addresses listed below. The hearings will begin at 1:00 p.m. and end at 9:00 p.m. or when everyone has spoken. Comments from members of the public must be received by 4:00 p.m. on July 21, 1980, to be considered in the Secretary's initial decision on the proposed State program.

ADDRESSES: The public hearings will be held at the Ramada Inn, Room A & B, Route 119 South and US 48, Morgantown, West Virginia, on July 14 and the Capitol Complex Conference Center, Room A/B, 1900 Washington Street, East, Charleston, West Virginia on July 15. Written comments should be sent to: Office of Surface Mining, Region I, Attention: West Virginia Administrative Record, 950 Kanawha Boulevard, East, Charleston, WV 25301, or may be hand delivered to the Regional Office. Previously identified information is available at the following addresses:

Office of Surface Mining, Region I, 950 Kanawha Blvd., East, Charleston, WV 25301.

Office of Surface Mining, Beckley District Office, 19 Mallard Court, Beckley, WV 25801; telephone: (304) 255–5265.

Department of Natural Resources, Division of Reclamation, Room 322, 1800 Washington Street, East, Charleston, WV 25305.

Division of Reclamation, Morgantown Street, Bruceton Mills, WV 26525; telephone: (304) 379–2671.

Office of Surface Mining, Clarksburg Field Office, 501 West Main Street, DeSales Hall, Room 214, Clarksburg, WV 26301; telephone: (304) 623–2913.

Office of Surface Mining, Pineville Field Office, 17 Main Street, Pineville, WV 24874; telephone: (304) 732–8850.

Office of Surface Mining, Morgantown Field Office, New Federal Bldg., 2nd Floor, 75 High Street, P.O. Box 886, Morgantown, WV 26505; telephone: (304) 291–5821.

Department of Natural Resources, 312 Main Avenue, Nitro, WV 25143; telephone: (304) 755–9141.

Department of Natural Resources, Elkins Operations Center, Elkins, WV 26241; telephone: (304) 639–1767.

Department of Natural Resources, 1304 Goose Run Road, Fairmont, WV 25544; telephone: (304) 366–5860.

Division of Reclamation, Chalet Village, Mount Gay, WV 25637; telephone: (304) 752–6839.

Department of Natural Resources, Route 16, McArthur, WV 25873; telephone: (304) 255–0401.

Division of Reclamation, 1180 Broad Street, Summersville, WV 26651; telephone: (304) 872–5616.

Division of Reclamation, Hicks Building, Welch, WV 24801; telephone: (304) 436–4507.

Division of Reclamation, 117 South Main Street, Philippi, WV 26416; telephone: (304) 457–3219.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Halsey, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, 950 Kanawha Blvd., East, Charleston, WV 25301; telephone: (304) 344–2331.

Dated: July 9, 1980.

Richard M. Hall,

Director, Office of Surface Mining.

[FR Doc. 80-20893 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1536-4]

Approval and Promulgation of the Missouri; State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The St. Louis County Air Pollution Control Appeal Board granted a variance for the Union Electric Company Meramec power plant to allow sufficient time for the company to design, construct and operate new control equipment for emissions of total suspended particulate (TSP) matter. The St. Louis County Air Pollution Control Appeal Board issues variances under authority granted by the Missouri Air Conservation Commission. Under the terms and conditions of the variance, the Meramec plant will be required to meet an interim emission limit of 0.30 lb. total suspended particulate matter per million BTU of heat input and a 50 percent opacity limit.

The EPA proposes to approve the variance granted to the Union Electric Company for its Meramec plant as part of the applicable SIP. The variance submittal generally complies with the SIP revision requirements of 40 CFR Part 51.

The variance order requires that construction of the new control equipment be completed as expeditiously as practicable. Control equipment is to be installed on all four units. The final compliance date is May 15, 1981, for units 1 and 2 and November 20, 1981, for units 3 and 4. Upon completion of the installation, the Meramec plant will be required to meet a particulate emission limit of 0.12 lb. per million BTU heat input and a visible emission limit of 20 percent opacity.

This proposal is published to notify the public of the receipt of this proposed SIP revision and to request comments on the proposal.

DATES: Comments must be received before September 9, 1980.

ADDRESS: Comments should be sent to Mr. Wayne G. Leidwanger, Air Support Branch, Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the state submission and the EPA prepared variance evaluation document are available at the above address. They are also available at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Service, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Missouri 63105.

FOR FURTHER INFORMATION: Contact Wayne G. Leidwanger at 816–374–3791 (FTS 758–3791).

SUPPLEMENTARY INFORMATION: The Union Electric Company Meramec plant is subject to an SO_2 emission limit of 2.3 pounds per million BTU of heat input in addition to the mass emission rate contained in Rule 10 CSR 10–5.030 and the visible emission limit of Rule 10 CSR 10–5.090. At the time the variance was requested (July 1, 1978), the allowable total suspended particulate matter rate was 0.18 lb. per million BTU and the allowable visible emission limit was 40 percent opacity. The Meramec plant is located in St. Louis County near the Mississippi River approximately 19 kilometers south southwest of the City of St. Louis.

In order to meet the required sulfur dioxide emission limit of 2.3 lb. per million BTU of heat input, the Union Electric Company switched to low sulfur western coal. The existing control devices used at the Meramec plant are inadequate to meet the TSP rules.

The Missouri Air Conservation Commission (MACC) amended Rule 10 CSR 10–5.090 to require sources to meet a 20 percent opacity limit at point sources and Rule 10 CSR 10–5.030 which is applicable to indirect heating sources. These rules are applicable only in the St. Louis Air Quality Contol Region. Application of amended Rule 10 CSR 10–5.030 to the Union Electric Company Meramec power plant requires an emission limit of 0.12 lb. per million BTU of heat input. EPA approved these rules at 45 FR 24140 on April 9, 1980.

The St. Louis County Air Pollution Control Appeal Board granted a variance for the Meramec plant on November 22, 1978, after a public hearing on October 20, 1978. The public hearing satisfies the requirements of 40 CFR 51.4(a)(1) and the public notification satisfies the requirements of 40 CFR 51.4(b).

Variances issued by local agencies in the State of Missouri must receive concurrence from the Missouri Department of Natural Resources (MDNR). The variance granted by St. Louis County was submitted to the MDNR on February 16, 1979. The MDNR submitted the variance and supporting documentation to the EPA on April 25, 1979. Because of this delay, the variance submittal does not comply with the 60-day period for submission to the EPA required by 40 CFR 51.6(d). The EPA does not believe this delay affects the approvability of the variance submittal.

The variance would allow the Meramec plant to operate at a mass emission rate of 0.30 lb. per million BTU of heat input and a visible emission limit of 50 percent opacity during the period of the variance. The only means available to the company which assures that the limits of the variance will not be exceeded is to operate at a reduced load. The variance granted does not specify a load level which would meet the emission limits. The Union Electric Company has been issued a permit which limits the operating load of the Meramec power plant. This permit was not submitted with the proposed SIP revision. The compliance schedule contained in the variance requires construction of the new control equipment to commence on units 1 and 2 on July 1, 1979, and units 3 and 4 on September 1, 1979. Start-up of the controls for units 1 and 2 is scheduled for February 15, 1981, and for units 3 and 4 on August 31, 1981. Final compliance for units 1 and 2 is May 15, 1981, and November 30, 1981, for units 3 and 4. The EPA believes this schedule is as expeditious as practicable.

The EPA proposes to approve the variance without the Meramec operating permit. EPA believes the emission limitation contained in the variance is enforceable regardless of the fact that

the local limitations stated in the operating permit are not Federally enforceable.

The EPA approved the Part D plan applicable to the St. Louis nonattainment area on Appril 9, 1980, at 45 FR 24140. Considering the impact of sources outside the nonattainment area, the plan projects attainment of the primary TSP standard by December 31, 1980. The impact of the temporary increase in emissions from the Meramec plant on the St. Louis nonattainment area is not significant. Therefore, under existing EPA rules, this relaxation in emission limitations is approvable.

The portion of the county in which the Meramec plant is located is designated attainment for total suspended particulate matter at 40 CFR Part 81. Because the area is attainment, prevention of significant deterioration (PSD) is a matter for consideration. EPA regulations exempt certain activities from an analysis of the impact on PSD [40 CFR 52.21(k)]. Included are activities which result in a temporary increase in emissions provided that the increase in emissions does not impact any Class I area or areas where the PSD increment is being violated. The variance granted the Union Electric Company allows a temporary increase in emissions and a subsequent decrease after new control equipment is installed. No Class I areas will be affected and there are no other areas where an increment is being violated that would be impacted. Therefore, the variance is exempt from the PSD impact analysis.

The emissions allowed under the variance will not cause violations of primary or secondary TSP standards in the attainment area.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "Specialized".

I have reviewed this regulation and determined that it is not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: June 26, 1980.

Earl J. Stephenson,

Acting Regional Administrator.

[FR Doc. 80-20699 Filed 7-10-80; 8:45 am]

BILLING CODE 6560-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Ch. 5

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: Pursuant to section 2 of Executive Order 12044, the Committee, during the period June 2, 1980 through December 1, 1980, is not planning to issue or review any significant regulations or any regulations affecting small businesses and organizations.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street, North, Suite 610, Arlington, Virginia 22201, Telephone: 703/557-1145.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-20692 Filed 7-10-80; 8:45 am]

BILLING CODE 6820-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 15

[Docket No. 20654; FCC 80-332]

Interference From Spark-Type Ignition Systems in Motor Vehicles; Report and Order

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission will not act to impose regulations on automotive ignition noise (43 FR 28007, June 28, 1978.) The Commission recognizes that there is a problem of interference to radio systems due to automotive ignition noise, but declines to take regulatory action at this time. Will maintain interest in technical developments and act at a later time, if effective solutions are identified.

EFFECTIVE DATE: Non-Applicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Irma B. Galane/Robert S. Powers, Office of Science and Technology, (202) 632-7040.

SUPPLEMENTARY INFORMATION:

In the matter of interference from spark-type ignition systems in motor vehicles, Docket No. 20654. See also 43 FR 28007, June 28, 1978.

Report and Order

Adopted: June 11, 1980.

Released: July 9, 1980.

By the Commission: Commissioner Lee concurring in the result.

Introduction

1. The Federal Communications Commission released a *Notice of Inquiry* on December 16, 1975 in the matter of interference from spark-type ignition systems in motor vehicles.[1] At the request of the industry the deadline for filing comments was advanced to September 15, 1978.[2]

2. Field surveys have shown that the major portion of radio frequency man-made noise in the spectrum above 25 MHz is created by the ignition systems of motor vehicles.

3. The automobile industry has pursued methods of reducing ignition interference for many years and with some success. Radiation standards and methods of measurement are in existence both nationally and internationally. In the U.S. it is the policy of automobile manufacturers to voluntarily comply with the Society of Automotive Engineers (SAE) Standards J551.[3]

4. The interference from a single vehicle that is complying with the SAE standard can be of low intensity and short duration. However, the collective effect of a flow of vehicles on a nearby thoroughfare degrades radio reception to a degree dependent on the amount of traffic. Most affected are mobile radio units since they receive radio signals while surrounded by a number of other motor vehicles. Often a vehicle limits its own reception capability by the radio frequency noise it generates. This has been a major incentive for automobile manufacturers to suppress ignition interference. The reception range of base stations in the land mobile services is commonly shortened by ignition radiation of motor vehices operating within several blocks of its receiving antenna, particularly at frequencies below 150 MHz.

5. The *Notice of Inquiry* asked for responses to 14 questions. These questions addressed three basic issues:

A. To what extent are radio communications degraded by ignition systems?

[1] 41 FR 1323 (January 7, 1976).

[2] 43 FR 28007 (June 28, 1978).

[3] Available from Society of Automotive Engineers, Inc., 2100 West Big Beaver, Troy, Michigan 48084.

B. How adequate is the Society of Automotive Engineers J551 voluntary standard for preventing degradation to radio communications?

C. What is the cost-effective state of the art with respect to the suppression of ignition radiation?

Comments

6. Degradation caused by ignition interference has been defined quantitatively by FCC investigators as being the increase of radiated power (usually expressed in dB) needed to restore the particular grade of radio reception to that which would be present in the absence of the interference. When ambient interference is absent, receiver sensitivity is determined by receiver noise only. The land mobile service is particularly affected by ignition interference because representative receivers are very sensitive and are often operated in the vicinity of groups of motor vehicles.

7. FCC field tests have been made for the purpose of determining degradation to land mobile reception. The results of these tests have been widely distributed throughout the United States in the form of FCC Research and Standards Reports (RS 7302, RS 75-05 and RS 76-03). Also FCC data have been accepted and distributed throughout the world by International Radio Consultative Committee (CCIR). All FCC reports are included in the record of this proceeding.

8. The subject of reception degradation created by ignition interference had not until recently been officially considered by International Special Committee on Radio Interference (CISPR). This Committee includes world-wide expertise on the subject of ignition radiation control standards. Several countries, including Canada, have adopted regulations centered about such standards. The rationale used by CISPR to originate its radiation limits is not clear. In this country the SAE limits were set many years ago to prevent vertical rolling of television pictures. Only during the past few years has attention been focused on land mobile radio reception. Recently, the FCC has been successful in introducing a Study Question to CISPR and a report that shows considerable degradation (average of 16 dB at 37 MHz and 10 dB at 153 MHz) to mobile reception from ignition radiation, even from radiation levels caused by brand-new vehicles. These tests were made by the FCC because it was claimed by the automobile manufacturing industry that owners remove the suppression fixes supplied on new vehicles.

9. At the outset of its research, by the use of pilot tests, FCC investigators arrived at two basic conclusions:

1. To understand the extent of degradation to land mobile reception caused by automobile ignition it is necessary to observe the effect of groups of motor vehicles in common occurences such as moving in traffic or waiting for a traffic light to change;

2. The key to satisfactory land mobile reception is more than intelligibility alone. Just as important is the annoyance effect of the interference. This condition is best appreciated by demonstration. An analogy is the annoyance experienced using a noisy telephone line. The use of such a line demands a degree of concentration depending on the amount of noise present. As a result, land mobile systems require an increased radiated power in order to provide satisfactory coverage where ignition interference is present;

10. In past years motor vehicle manufacturers have conducted a series of measurement tests. Primarily they were unsuccessful efforts to arrive at objective (measurement) methods[4] for determining degradation. Many attempts have been made previously to use objective (Measurement) methods to arrive at degradation but no generally accepted procedure has evolved with respect to either frequency or amplitude modulated signals. These types of modulation are used almost exclusively, in the land mobile service. This is why the FCC decided to employ subjective[5] testing. Annoyance definitions for quality of reception was thus the base for our reception quality definitions.

11. The FCC and the CCIR have defined 5 grades of service as follows:

Quality grade defined	Interfering effect was—
5	Almost nil [1]
4	Noticeable [1]
3	Annoying [1]
2	Very annoying [1]
1	So bad that the presence of speech is barely discernible [1]

[1] Speech is intelligible but with increasing effort as the grade decreases.

12. In 1973 FCC tests with respect to Grade 3 showed that the general population of motor vehicles produced approximately 25 dB degradation at 37 MHz decreasing to 12 dB at 150 MHz. Degradation with respect to Grade 4 ranged from 30 dB at 37 MHz to 17 dB at 150 MHz. Data was collected both where groups of motor vehicles were moving in traffic and while waiting for a traffic light to change. As mentioned earlier in this *Report and Order*, tests were more recently made on brand-new vehicles arranged in groups of 12. Degradation with respect to Grade 4 ranged from 16 dB at 37 MHz to 10 dB at 153 MHz were measured during these new vehicle tests.

13. The various automobile manufacturers question the FCC field test findings on the basis that they were not properly conducted. For example, they believe that quality grades of reception should be based on intelligibility[6] alone (which would result in lower degradation values). When evaluated in terms of the noise reduction's effect on intelligibility, improvements in present day suppression methods may not be cost effective, according to the industry.

14. The Motor Vehicle Manufacturers Association (MVMA) has commented on behalf of the motor vehicle industry. They recently completed a series of tests, including some subjective tests.

MVMA has defined 5 Grades of service as follows:

Grade	Description
5	Could understand the message extremely well
4	Could understand the message fairly well.
3	Think I understood, but had to guess at some words.
2	Could barely discern the message
1	Couldn't detect speech at all.

15. The following table was constructed with data extracted from MVMA comments. Subjective testing was used and the juries consisted of people associated with MVMA. Test condition were similar to those used by the FCC investigators applicable to groups of vehicles.

Degradation

[dB]

Test	147 MHz			
	Grade 4 reception		Grade 3 reception	
	Annoyance, FCC	Intelligibility, MVMA	Annoyance, FCC	Intelligibility, MVMA
12 vehicle Matrix A	11	2	4	2
12 vehicle Matrix B	9	1	6	.5
1 "noisy" vehicle	13	2.5	6.5	1
1 suppressed vehicle	5	1	2.5	1.5

[4] Objective methods such as a reading on a meter that correllates with quality of reception degraded by ignition noise. No such correllation has yet been established.

[5] Subjective testing requires a scoring by the listener as to how he himself rates quality of reception degraded by ignition noise.

[6] Intelligibility in this case means the ability to understand the message in the midst of distracting ignition noise. The listener is called upon to concentrate on a message while his attention is shared with properly operating the vehicle. This burden is magnified as annoyance increases. See paragraph 11 for definitions of quality grades.

Degradation—Continued

[dB]

Test	50 MHz			
	Grade 4 reception		Grade 3 reception	
	Annoyance, FCC	Intelligibility, MVMA	Annoyance, FCC	Intelligibility, MVMA
12 vehicle Matrix A	17	8	10	6
12 vehicle Matrix B	19.5	2	5.5	2
1 "noisy" vehicle	27.5	11	18	2.5
1 suppressed vehicle	17	10	9.5	8.5

Note.—All vehicles except the "noisy" one met the SAE standard. A matrix usually consisted of 3 vehicles across in a row and four vehicles deep. Engine speed at idle. (All data gathered by MVMA people).

16. The above data shows that reception degradation based on intelligibility results in lower values than degradation based on annoyance. It is probably for this reason that MVMA seems to conclude that there is little problem with ignition radiation interference to the land mobile services. We are not inclined to agree because it is a normal commercial land mobile design practice to protect coverage against annoyance as well as to provide for intelligibility.

17. MVMA points out that many types of interference exist and, in the case of ignition interference, blankers and other electronic devices can cure the problem where it may exist. Motorola and General Electric have commented in this proceding on the quite limited effectiveness of such fixes. There is also the problem of cost-effectiveness of such fixes if they have to be included in all land mobile receivers.

18. MVMA does state that some degradation occurs under the "worse" conditions. While it is not clearly stated it is believed that such cases are meant to occur where the strength of the desired signal values are in the lower range and where motor vehicles occur in groups. Apparently they are not convinced that the latter case often occurs. It is true that worse degradation does occur where the desired signal are at lower values, but it must be pointed out that such values of signal strength would provide good quality reception in the absence of ambient interferences including ignition noise. The literature supports our conclusion that ignition noise is the most prevalent of all man-made noises in the VHF portion of the spectrum. MVMA is silent on this point. Spurious radiations such as those from ISM devices [7] and those associated with transmitters are not considered (here) to be man-made noises. Such radiations are already regulated under other parts of the Commission's Rules.

19. The Communications Division of the Electronic Industries Association (EIA) has performed some tests (not reported) and has also "studied the literature on the entire question of ignition interference". They have come to the conclusion that the domestic automobile industry is "Making good progress in reducing the ignition radiation from new passenger vehicles". On the other hand, because of "still troublesome reports" from some vehicles they suggest a need for stricter compliance with the SAE J551 standard. EIA would tighten the standard to require that 90% (instead of the present requirement of 80%) of new vehicles meet the standard 90% of the time (instead of the present requirement of 80%).

We have no evidence that even the present 80–80 voluntary requirement is presently being met. The actual sampling procedure by automobile manufactures has not been revealed, except by Ford Motor Company. Ford resorts to prototype testing of one vehicle (numbers of models unknown).

20. The EIA comments also report the results of a paper study that concludes that a vehicle just meeting the J551 limit will produce 20 dB degradation to the vehicle own communication receiver at 45 MHz and 150 MHz.

21. EIA states that their research (not included in their comments) indicates that there is a diligent effort for compliance by the domestic automobile industry. They say that the dominant problem lies with motorcycles, modified vehicles and imported vehicles not conforming to the SAE standard. The research utilized by EIA to support these statements is not identified except for a referral to Stanford Research Instutute report dated May 1978 (SRI–7806–C2.50). The author of this report does not support these statements (See comments in this proceeding by Richard A. Shephard, June 18, 1978).

22. Stanford Research Institute (SRI) was funded by the FCC to develop cost-effective fixes that would suppress ignition radiation at least 10 dB more than an automobile that was fully suppressed according to the state-of-the-art. A state-of-the-art vehicle was supplied by the FCC. It was selected by examining 42 vehicles for lowest radiation.

23. The SRI findings, which in fact provided the 10 dB improvement, are set forth in a report dated January 1975, entitled "Improved Suppression of Radiation From Automobiles Used by the General Public" and is available from SRI.[8] The automobile industry's comments on this effort were negative as follows:

1. The spark plug developed by SRI is not feasible because of its excessive length.

2. A spark plug that includes capacitance, such as SRI's, will promote fouling due to carbon deposits;

3. A plated distributor cap, utilized by SRI to achieve improvement, is not feasible due to its degrading effect on system durability;

4. The durability of a resistor rotor suggested by SRI is not known and therefore cannot be incorporated in general production engines until and unless it successfully passes extensive testing.

Lacking the specialized expertise required to make a judgment on the commercial feasibility of the SRI contribution, the Commission encourages the industry to continue their search for improved cost-effective ignition radiation suppression methods. The SRI report is included in the record of this proceeding.

24. The American Telephone and Telegraph Co. has stated that ambient noise is generally recognized as a significant consideration in the design of land mobile radio systems and the principal source of such noise is ignition interference. On the other hand they also state that the current level of ignition noise is not significantly degrading public land mobile services, but any increase in the present level could have a significantly adverse effect. We take this to mean that increased radiated power takes care of the present situation.

25. The American Radio Relay League and several radio amateurs are convinced that ignition interference needs to be reduced. Taking exception to this opinion, and as a radio amateur, A. D. Doty (former manager of MVMA) believes that the SAE voluntary standard adequately protects radio

[7] "ISM devices" are devices which use radio waves for industrial, scientific, medical, or any other purposes including the transfer of energy by radio and which are neither used nor intended to be used for radiocommunication. *See* 47 CFR 15.1 and 18.1 *et seq.*

[8] Available from NTIS, Springfield, Va. 22161 accession = PB 23 9471.

communications from ignition interference.

26. The association of Maximum Service Telecasters (AMST) and General Electric Company believe that ignition interference is quite substantial throughout the VHF–TV band.

27. Several ignition wire manufacturers claim superior suppression capabilities for their products and predict still further improvements. There are, however, no independent organizations to test their products. The FCC has not been able to devote their facilities for this purpose and our test car used for the SRI contract has been returned to the General Services Administration.

28. In their statements, foreign car manufacturers vary in degree of compliance with the SAE voluntary standard. While assuming that CISPR and SAE limits protect radio communications, some companies claim compliance, some do not, and some say they are not sure. They all request that no changes be made in the status quo.

Conclusion

29. In the opinion of FCC investigators there is an ignition interference problem. However, federal regulations based on the SAE standard are not advocated at this time because:

1. The present voluntary radiation limit is inadequate for the protection of the land mobile services and, furthermore, this limit, as it exists today, is easily met by most motor vehicles except perhaps some trucks and motorcycles. Improvement of these categories of vehicles will not improve the current situation sufficiently.

2. The administrative burdens and enforcement problems that would result from federal regulations at this time are burdensome and difficult to achieve with current regulatory tools.

30. The commission appreciates the efforts that have been made by the motor vehicle manufacturing industry to date. We are well aware that there are costs associated with reduction of ignition noise,[9] and that the costs of reduced noise must be balanced against the benefits of more effective spectrum use before major resource commitments are made. We are not, however, satisfied that sufficient progress toward the development of cost-effective methods for reducing ignition noise radiation has been made.

31. Accordingly, we will: (1) Not act to impose regulation at this time; (2) hold the docket open for possible future action; (3) continue to accept comments on further technological progress; (4) continue to accept comments from parties adversely affected by ignition noise; (5) continue to monitor the progress made in resolving the noise problem; (6) provide for FCC participation with CISPR, (7) provide facilities at our laboratory to test the effectiveness of new developments, and (8) if at a later date the Commission determines the industry's response is inadequate, then we will issue a Further Notice of Inquiry, or a Notice of Proposed Rule Making looking towards adoption of rules to accomplish what must be done.

32. In view of the foregoing we are of the opinion that this proceeding be continued in the public interest, convenience and necessity. Authority for this action is contained in Section 4 (i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, *as amended.*

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-20825 Filed 7-10-80; 8:45 am]

BILLING CODE 6712-01-M

[9] Comments submitted by Champion Spark Plug Company estimated a cost of $200,000,000 per year associated with a $0.25 increase in the retail price of a spark plug. General Electric Company points out that if the cost per car of reduced ignition noise were $100, the national investment (corresponding to 100,000,000 vehicles) would reach $10 billion. The actual cost figure per car for a useful degree of noise reduction is not known at this time.

Notices

Federal Register
Vol. 45, No. 135
Friday, July 11, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch Program; National Average Payment for the Period July 1-Dec. 31, 1980

Pursuant to Section 11 of the National School Lunch Act (42 U.S.C. 1759a) and § 210.4 and § 210.11 of the regulations governing the National School Lunch Program (7 CFR Part 210), notice is hereby given of adjustments in the national average factors for payment for lunches and the maximum rates of reimbursements. The national average factors for payment for lunches served during the six-month period July 1–December 31, 1980, to children participating in the National School Lunch Program are as follows: (a) 18.50 cents from general cash-for-food assistance funds for each lunch; (b) an additional 63.50 cents from special cash assistance funds for each reduced price lunch and (c) an additional 83.50 cents from special cash assistance funds for each free lunch. If in any State a maximum charge to students of less than 20 cents is established for reduced price lunches, the special assistance factor prescribed for reduced price lunches in such State shall be the lesser of (a) the special assistance factor for free lunches minus the maximum reduced price charge established by the State, or (b) the special assistance factor for free lunches minus 10 cents.

The total amount of general cash-for-food assistance payments and special cash assistance payments to be made to each State agency from the sums appropriated therefore, shall be based upon such national average factors.

The above factors represent a 5.29 percent increase during the six-month period November 1979–May 1980 (from 251.3 in November 1979 to 246.6 in May 1980) in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

For the six-month period July–December 31, 1980 (a) the maximum rate of reimbursement from general cash-for-food assistance funds shall be 24.50 cents per lunch served; (b) the maximum per lunch reimbursement (from a combination of general cash-for-food assistance and special cash assistance funds) shall be 117.00 cents for a free lunch and 97.00 cents for a reduced price lunch. If in any State a maximum charge to students of less than 20 cents established for reduced price lunches, the maximum per lunch reimbursemnt prescribed for reduced price lunches in such State shall be the lesser of (a) the maximum per lunch reimbursement for free lunches minus the maximum reduced price charged established by the State, or (b) the maximum per lunch reimbursement for free lunches minus 10 cents.

Pursuant to Section 12 of the National School Lunch Act, adjustments are made in the national average payment factors to Alaska. For lunches served in the aformentioned period to children participating in the National School Lunch Program in the State of Alaska payment rates are as follows: (a) 30.00 cents from general cash-for-food assistance funds for each lunch and (b) an additional 125.50 cents from special cash assistance funds for each reduced price lunch and (c) an additional 135.50 cents from special cash assistance funds for each free lunch. The reduced price special assistance payment factor reflects the currently effective 10 cent charge for each reduced price lunch served under the National School Lunch Program in Alaska. If, in the State of Alaska, the maximum statewide price charge for lunch changes from the current 10 cents charge, the special assistance factor prescribed for reduced price lunches shall be the lesser of (a) the special assistance factor for free lunches minus the maximum reduced price charge established by the State of Alaska, or (b) the special assistance factor for free lunches minus 10 cents.

For the six-month period July 1–December 31, 1980, the maximum per lunch rates of payment to the State of Alaska for lunches served in the National School Lunch Program shall be as follows: (a) 39.75 cents from general cash-for-food assistance funds for each lunch and (b) from a combination of general cash-for-food assistance and special cash assistance 189.50 cents for a free lunch and 179.50 cents for a reduced price lunch.

The total amount of general cash-for-food assistance payments and special cash assistance payments, to be made to the State of Alaska from the sums appropriated, therefore, shall be based upon such factors.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Pending legislation will have a major impact on the National Average Payment Factors. This legislation, which is currently under consideration in both the Senate and House of Representatives and appears very likely to be passed, contains provisions to amend section 4 of the National School Lunch Act, as amended, by reducing the general cash reimbursement rate for all categories of school lunches (free, reduced price and paid) by 2.5 cents, except in School Food Authorities where 60 percent or more of the lunches served were served free or at a reduced price during the second preceding fiscal year. This pending legislation also contains provisions to amend section 11 of the National School Lunch Act which would remove the incentive for schools to offer reduced price lunches at less than 20 cents per lunch, by setting the National Average Payment factor for reduced price lunches at 20 cents less than that for free lunches. Also, this pending legislation provides for adjustments in the school lunch National Average Payment factors as set forth in this notice to be made on an annual rather than semi-annual basis, eliminating the January 1981 adjustments and thereby extending the factors set forth in this notice for a period of one calendar year ending June 30, 1981.

If this pending legislation becomes public law, a notice of the new factors will be published immediately. Until that time, the rates in this notice remain in effect.

(Catalog of Federal Domestic Assistance Program No. 10.555)

Effective date: This notice shall be effective as of July 1, 1980.

(Sec. 4, P.L. 92-433, 76 Stat. 944, 42 U.S.C. 1753, 84 Stat. 208, 42 U.S.C. 1752, 60 Stat. 231, 42 U.S.C. 1754; Sec. 2, P.L. 93-150, 86 Stat. 726, 42 U.S.C. 1753, 60 Stat. 232, 86 Stat. 729, 42 U.S.C. 1757)

Note.—This notice has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has not been classified "significant." An approved Final Impact Statement is available from Director, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202 447-8130).

Dated: July 3, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-20586 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-30-M

School Breakfast Program; National Average Payment for the Period July 1-Dec. 31, 1980

Pursuant to Section 11 of the National School Lunch Act (42 U.S.C. 1759a) and § 220.4 and § 220.9 of the regulations governing the School Breakfast Program (7 CFR Part 220), notice is hereby given that the national average payment factors for breakfasts served during the six-month period July 1-December 31, 1980 to children participating in the School Breakfast Program shall be: (a) 14.75 cents for all breakfasts; (b) an additional 27.75 cents for each reduced price breakfast, and (c) an additional 37.75 cents for each free breakfast. The total amount of breakfast assistance payments to be made to each State agency from the sums appropriated therefore, shall be based upon such national average factors: *Provided, however,* that additional payments shall be made in such amounts as are needed to finance reimbursement rates assigned for schools with severe need under § 220.9.

The above factors represent a 5.29 percent increase during the six-month period November 1979-May 1980 (from 251.3 in November 1979 to 264.6 in May 1980) in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

For schools without severe need, the maximum rates of reimbursement for paid breakfasts, for reduced price breakfasts, and for free breakfasts shall be equal to the respective factors set out above.

For schools with severe need, the maximum rates of reimbursement are established pursuant to Section 4(b) of the Child Nutrition Act of 1966 as amended. This law requires that these rates be computed using two methods and that the method yielding the higher rates be used. Accordingly, for schools with severe need, the maximum rate of reimbursement for paid breakfasts shall be equal to the national average factor for all breakfasts, and the maximum rate of reimbursement for reduced price and free breakfasts shall be 57.75 and 62.75 cents, respectively.

Pursuant to Section 12 of the National School Lunch Act, adjustments are made in the national average payment factors to Alaska. For breakfasts served during the aforementioned period to children participating in the School Breakfast Program in the State of Alaska payment rates are as follows: (a) 24.00 cents for all breakfasts, (b) an additional 45.25 cents for each reduced price breakfast, and (c) an additional 60.25 cents for each free breakfast. For schools with severe need, the maximum rate of payment for paid, reduced price, and free breakfasts shall be 24.00, 96.50, and 101.50 cents, respectively. The total amount of breakfast assistance payments to be made to the State of Alaska from sums appropriated therefore, shall be based upon the aforementioned adjustments to national average payment factors: *Provided, however,* that additional payments shall be made in such amounts as are needed to finance payment rates assigned for schools with severe need under § 220.9 of regulations governing the School Breakfast Program (7 CFR Part 220).

Definitions: The terms used in this notice shall have the meanings ascribed to them in the regulations governing the School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Program No. 10.553)

Effective date: This notice shall be effective as of July 1, 1980.

(Sec. 4 (U.S.C. 1773(b)) Pub. L. 92-433, 80 Stat. 886; *Post,* p. 726; Sec. 4, Pub. L. 93-150, 80 Stat. 866; 85 Stat. 85; 86 Stat. 725; 42 U.S.C. 1773; 86 Stat. 724)

Note.—This notice has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has not been classified "significant." An approved Final Impact Statement is available from Director, School Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202) 447-8130.

Dated: July 3, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-20584 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-30-M

Special Milk Program for Children; Rate of Reimbursement for the Period July 1, 1980, to June 30, 1981

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772) and § 215.8 of the regulations governing the Special Milk Program for Children (7 CFR Part 215), notice is hereby given that the rate of reimbursement per half pint (236 ml.) of milk purchased and served to all children, except needy children in pricing programs operated by School Food Authorities and institutions which elect to provide free milk, shall be:

For the period July 1, 1980 through June 30, 1981: 8.5 cents, except that, for the period September 1, 1980, the rate of reimbursement per half pint of milk in schools and institutions participating in the Special Milk Programs in addition to meal service programs authorized under the National Lunch and Child Nutrition Acts shall be 5.0 cents.

The 8.5 cent rate was derived by applying the percentage increase in the Producer Price Index for Fresh Processed Milk during the 12-month period May 1979 to May 1980 (from 167.3 in May 1979 to 181.1 in May 1980) to the unrounded rate of reimbursement prescribed for the period July 1, 1979 to June 30, 1980, adjusted to the nearest one-fourth cent. The September reimbursement rate reduction is in accordance with the provisions of the Supplmental Appropriation Act for Fiscal Year 1980.

While the rate of reimbursement per half pint of milk (served under the conditions as set forth above) for the period October 1, 1980 through June 30, 1981 is at this time set at 8.5 cents, it is anticipated that the provisions of the fiscal year 1980 Supplemental Appropriations Act which reduces reimbursement during September 1980 under the conditions indicated may be extended by pending legislation through the remainder of the period to June 30, 1981. This pending legislation appears very likely to be passed. If this pending legislation is enacted, immediate action will be taken to issue a subsequent notice making the 5.0 cent rate effective from October 1, 1980 through June 30, 1981, under the terms and conditions stated in that legislation.

(Catalog of Federal Domestic Assistance Program No. 10.556)

Statement.—This notice has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has not been classified "significant." An approved Final Impact Statement is available from Director, School Program Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202) 447–8130.

Effective Date: This notice shall be effective as of July 1, 1980.

Dated: July 3, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80–20585 Filed 7–10–80; 8:45 am]

BILLING CODE 3410–30

Child Care Food Program; National Average Payment Rates, Home Sponsoring Organization Administrative Payment Rates, and Day Care Home Food Service Payment Rates for the Period July 1–December 31, 1980, and the Period July 1, 1980–June 30, 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

Pursuant to section 17 of the National School Lunch Act, as amended by Pub. L. 95–627, and § 226.4, § 226.13, and § 226.14 of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These national average payment rates for meals served to children attending centers and the food service payment rates for meals served to children attending day care homes shall be in effect during the period July 1–December 31, 1980. The administrative payment rates for administrative costs of sponsoring organizations with day care homes shall be in effect during the period July 1, 1980–June 30, 1981. In all States except Alaska, the new rates are as follows:

Section 17.—*All States Except Alaska*

National Average Payment Rates—(Centers)—Per Meal Rates [Cents]	
Breakfasts:	
Paid	14.75
Free	37.25 + paid 14.75 = 52.00
Reduced	27.75 + paid 14.75 = 42.50
Lunches and suppers:	
Paid	[1]18.50
Free	83.50 + paid 18.50 = [1]102.00
Reduced	63.50 + paid 18.50 = [1]82.00
Supplements	
Paid	7.75
Free	30.50
Reduced	23.25

Section 17.—*All States Except Alaska*—Continued

Administrative Payment Rates—(Sponsoring Organizations of Day Care Homes)—Per Home/Per Month Rates [Dollars]	
Initial 25 day care homes	48
Next 50 day care homes	36
Additional day care homes	32

Food Service Payment Rates—(Day Care Homes)—Per Meal Rates [Cents]	
Breakfasts	48
Lunches and suppers	95
Supplements	26

[1]These rates do not include the value of commodities or cash-in-lieu of commodities which institutions may elect to receive as additional assistance for providing lunches and suppers in the Program. An adjustment to the value of commodities or cash-in-lieu of commodities rate, effective July 1 of each year, is published in a separate notice in the FEDERAL REGISTER.

Pursuant to Section 10(a) of Pub. L. 95–627, the Department adjusts the payment rates for participating institutions in the State of Alaska. The national average payment rates for meals served to children attending centers and the food service payment rates for meals served to children attending day care homes shall be in effect during the period July 1–December 31, 1980. The administrative payment rates for administrative costs of sponsoring organizations with day care homes shall be in effect during the period July 1, 1980–June 30, 1981. The new rates for Alaska are as follows:

Section 10(a).—*Alaska*

National Average Payment Rates—(Centers)—Per Meal Rates [Cents]	
Breakfasts:	
Paid 24.00	
Free 79.25 + paid 24.00 = 84.25	
Reduced 45.25 + paid 24.00 = 69.25	
Lunches and suppers:	
Paid [1]30.00	
Free 135.50 + paid 30.00 = [1]165.50	
Reduced 115.50 + paid 30.00 = [1]145.50	
Supplements:	
Paid 12.50	
Free 49.50	
Reduced 37.50	

Administrative Payment Rates—(Sponsoring Organizations of Day Care Homes)—Per Home/Per Month Rates [Dollars]	
Initial 25 day care homes	78
Next 50 day care homes	61
Additional day care homes	52

Food Service Payment Rates—(Day Care Homes)—Per Meal Rates [Cents]	
Breakfasts	78
Lunches and suppers	154
Supplements	46

[1]These rates do not include the value of commodities or cash-in-lieu of commodities which institutions may elect to receive as additional assistance for providing lunches and suppers in the Program. An adjustment to the value of commodities or cash-in-lieu of commodities rate, effective July 1 of each year, is published in a separate notice in the FEDERAL REGISTER.

The national average payment rates represent a 5.29 percent increase in the factors prescribed for the period January 1–June 30, 1980. This represents the percentage of increase during the six-month period November 1979 to May 1980 (from 251.3 in November 1979 to 264.6 in May 1980) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The administrative payment rates represent a 7.65 percent increase in the rates prescribed for the period May 1–June 30, 1980. This represents the percentage of increase during the six month period November 1979 to May 1980 (from 227.5 in November 1979 to 244.9 in May 1980) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. It should be noted that the adjustment of the administrative payment rates reflects changes in the Consumer Price Index since November 1979, even though the regulations state that these rates will be adjusted to changes "over the most recent twelve-month period for which data are available" (§ 226.4(g)(3)). The adjustment included in this notice is limited to a six-month period because it was not until January 1980 that the rates were formally established in the final regulations. For this reason, this notice announces adjustments of the administrative payment rates based on changes in the Consumer Price Index between November 1979 and May 1980. This is the most recent period for which Consumer Price Index information is available. All future adjustments in these rates will be based on changes during the full twelve-month period.

The food service payment rates represent a 5.29 percent increase in the rates prescribed for the period May 1–June 30, 1980. This represents the percentage of increase during the six-month period November 1979 to May 1980 (from 251.3 in November 1979 to 264.6 in May 1980) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State Agency for distribution to Program sponsors is based on the rates contained in this notice.

Legislation which would change some of these reimbursement rates is currently before the United States Senate and House of Representatives. It is likely that legislation changing these rates will be enacted. In that

eventuality, a notice will immediately be published in the Federal Register announcing the revised reimbursement rates.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published on January 22, 1980 at 45 FR 4960.

(Catalog of Federal Domestic Assistance Program No. 10.558)

(Section 2, Pub. L. 95-627, 92 Stat. 3603, (42 U.S.C. 1766); sec. 10, Pub. L. 95-627, 92 Stat. 3623, (42 U.S.C. 1960))

Effective date. This notice shall be effective as of July 1, 1980.

Dated. July 8, 1980.

Sydney Butler,

Acting Assistant Secretary

FR Doc. 80-20819 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Uinta National Forest Grazing Advisory Board; Meeting

The Uinta National Forest Grazing Advisory Board will meet at 9 a.m. on Wednesday, July 30, 1980, at the Payson Guard Station.

The purpose of this meeting is to have a field review of the current allotment management plans and proposed criteria for the planning and utilization of the Range Betterment Fund.

The meeting will be open to the public. Those who participate will need to supply their own saddle horse and equipment. Persons who wish to attend should notify Ward F. Savage, Uinta National Forest Supervisor's Office, P.O. Box 1428, Provo, Utah 84601, phone 801-377-5780. Written statements may be filed with the Board before or after the meeting.

Dated: June 30, 1980.

Don T. Nebeker,

Forest Supervisor.

[FR Doc. 80-20860 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-55-M

Middle Fork of the Feather Wild and Scenic River; Boundary Adjustment of the Recreation Zone

Pursuant to the Authority delegated to the Chief, Forest Service by the Secretary of Agriculture in 7 CFR 2.60, the boundaries of the Recreation Zone of the Middle Fork of the Feather Wild and Scenic River are hereby modified. The enclosed description corrects and amends Notices in the Federal Register published in Volume 35, No. 45, March 6, 1970; Volume 35, No. 132, July 9, 1970; Volume 43, No. 235, December 6, 1978.

The Recreation Zone of the Middle Fork of the Feather River contains deficiencies associated with the current described boundary because it was originally in a very narrow strip. A recreation management plan for the river has identified the need to protect certain resources, consistent with the Wild and Scenic Rivers Act, which are now outside the existing boundary. Critical areas outside the river boundary should be included within the boundary to provide for proper protection and management. These critical areas are discussed below.

1. Scenic backdrop and Recreation Use—The recreation zone is heavily used for fishing, floating, swimming, hiking, bicycling, and because of its accessibility, simply viewing of scenery. An integral element of the enjoyment of these activities is the scenic backdrop afforded from the river and from adjacent public roads. In many places the boundary is too narrow to effectively protect the scenic resource.

2. Old channels—There are several areas where old channels, which may become active again, are outside the boundary. These channels should be included to protect the free flowing qualities of the river.

3. Gravel deposit—There are potential gravel sources outside but adjacent to the present boundary. If extraction occurred, such an industrial use would have an adverse effect on the scenic and recreational resources.

4. Adjust boundary to logical natural boundaries to facilitate management and acquisition—The present river boundary bisects private parcels in a zig-zag fashion. In many areas, land acquisition within this old boundary would leave the landowner and the Forest Service with a property boundary difficult to locate and describe. In other areas the landowner would be left with isolated parcels which may or may not be considered an uneconomic remnant under Public Law 91-646. In many areas a much more logical boundary would be a recognizable feature, such as a railroad or highway. This action has been requested by some owners. The boundary should be adjusted to utilize these features.

5. Sufficient area for recreation development—The recreation plan has identified that recreation facilities, parking and sanitation, will be necessary at the high-use sites, such as bridge crossings and swimming holes. The present boundary does not provide sufficient space for these facilities.

There are two areas where proposed boundary adjustments include substantial additional areas. One is at Sloat where a ridge is immediately visible from the river and provides a critical scenic backdrop. The recreation management plan stresses the need to protect this important scenic resource. Ridges along other areas of the river are masked by intervening topography or other cover, but in this area there is no other protection. The other area is near the eastern boundary of the Recreation Zone and includes a tributary valley to the south as an integral part of the Recreation Zone.

This valley, currently used for cattle grazing, adds significantly to the scenic resource of the area.

To achieve the protection and management of the Recreation Zone portion of this river, the legal description for the river area, Mount Diablo Meridian, Calfifornia, as published in the Federal Register, Volume 35, No. 45, Friday, March 6, 1970, and Volume 35, No. 132, page 11064, July 9, 1970, and Volume 43, No. 235, Wednesday, December 6, 1978, page 51169 is corrected and amended as follows:

T-22N., R. 12E.—Delete entire present description, insert the following:

Section 4—That portion of the SW¼NE¼SW¼, NW¼SW¼, SW¼NW¼, and the W½SE¼SW¼ lying southwesterly of the southwesterly right-of-way line of California State Highway 70; N½N½SW¼SW¼, SE¼NE¼SW¼SW¼.

Section 5—That portion of Lots 1 and 2 and SE¼NE¼ lying southwesterly of the southwesterly right-of-way line of California State Highway 70; Lot 3, SW¼NE¼, SE¼NW¼, N½N½NE¼SW¼, SE¼NE¼NE¼SW¼, N½SE¼.

Section 9—Tract 2, N½NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, W½NW¼, SW¼NW¼SE¼, NW¼, SW¼SE¼NW¼, W½SE¼SE¼NW¼, W½NE¼ NE¼SW¼,SE¼, NE¼NE¼SW¼, NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼; that portion of the N½SW¼SW¼ and of the NW¼SE¼SW¼ lying north of the north right-of-way line of Plumas County Road No. 506; NW¼NE¼ SE¼SW¼;that portion of NE¼SE¼ excluding Tract 2 and lying south of the southerly right-of-way line of Plumas County Road No. 520; S½N½NW¼SE¼ excluding Tract 2, S½NW¼SE¼ excluding Tract 2, NE¼NE¼SE¼SE¼

Section 10—That portion of the N½SW¼, NW¼SE¼SW¼ lying south of the southerly right-of-way line of Plumas County Road No. 520 and west of the westerly right-of-way line of California State Highway 89; N½SW¼SW¼, NE¼SW¼ SW¼SW¼, SE¼SW¼SW¼, S½SE¼SW¼, S½SW¼ SE¼; that portion of the

SW¼SE¼ SE½ lying southwest of the southwesterly right-of-way line of the Western Pacific Railroad Company.

Section 14—That portion of the S½SW¼ NE¼SW¼,SE¼NE¼SW¼, S½S½NW¼SW¼, N½N½SW¼SW¼, N½SE¼SW¼, NE¼SW¼SE¼SW¼, SE¼SE¼SW¼, SW¼SE¼ lying southwest of the southwesterly right-of-way line of the Western Pacific Railroad Company.

Section 15—That portion of the W½E½ NE¼NE¼,and the W½NE¼NE¼ lying west of the westerly right-of-way line of the Western Pacific Railroad Company; N½NW¼NE¼, N½S½NW¼NE¼, SE¼SE¼NW¼NE¼, W½E½SE¼NE¼, W½SE¼NE¼, N½NE¼NW¼, NE¼SE¼ NE¼NW¼,W½NE¼NE¼SE¼, NW¼NE¼SE¼, S½NE¼SE¼, N½NE¼SE¼ SE¼.

Section 23—That portion of the NE¼ lying west of the westerly right-of-way line of the Western Pacific Railroad Company; E½ E½E½NW¼, NW¼NE¼NE¼NW¼, SW¼NE¼SE¼NW¼; that portion of the S½NW¼SE¼NW¼, SW¼SE¼NW¼, W½SE¼SE¼NW¼, NE¼SW¼ lying northeast of the northeasterly right-of-way line of California State Highway 89; that portion of the SE¼ lying between the westerly right-of-way line of the Western Pacific Railroad Company and the easterly right-of-way line of California State Highway 89.

Section 24—That portion of the SW¼SW¼ lying southwest of the southwesterly right-of-way line of the Western Pacific Railroad.

Section 25—That portion of the NE¼NE¼, SE¼NW¼NE¼, N½NE¼ SW¼NE¼,NW¼SW¼NE¼ lying southeast of the southwesterly right-of-way line of Plumas County Road No. 115; SW¼NE¼SW¼NE¼, N½SW¼SW¼NE¼, SW¼SW¼SW¼ NE¼, N½N½SE¼NE¼, W½NW¼SE¼NW¼, SE¼NW¼ SE¼NW¼, S½SE¼NW¼; that portion of the W½SW¼ NE¼NW¼ lying south of the southerly right-of-way line of the Western Pacific Railroad Company; that portion of NW¼NW¼ lying between the southwesterly right-of-way line of the Western Pacific Railroad Company and the northeasterly right-of-way line of California State Highway 89; that portion of the SW¼NW¼ and the N½N½N½SW¼ lying east and north of the easterly and northerly right-of-way line of California State Highway 89.

Section 26—That portion of the NE¼NE¼ lying northeast of the northeasterly right-of-way line of California State Highway 89.

T3T.22N., R.13E.—Delete entire present description, insert the following:

Section 1—That portion of the N½ Lot 4 lying northwest of the centerline of the mainline track of the Western Pacific Railroad Company.

Section 2—That portion of Lots 1 through 4, N½NE¼SW¼NW¼, NW¼ SE¼NW¼ lying north of the centerline of the mainline track of the Western Pacific Railroad Company; W½SW¼NW¼.

Section 3—E½ Lot 1, S½NE¼, SE¼NW¼, E½SW¼; that portion of the S½SW¼NW¼, W½SW¼ lying southeast of the southeasterly right-of-way line of the Western Pacific Railroad Company.

Section 4—S½SE¼SW¼; that portion of SE¼ lying southeast of the southeasterly right-of-way line of the Western Pacific Railroad Company.

Section 9—E½, E½W½, E½W½W½, W½SW¼SW¼.

Section 10—NW¼, W½SW¼.

Section 16—N½ Lot 2, SW¼ Lot 2, NW¼SE¼ Lot 2, W½W½ Lot 3, NE¼NW¼ Lot 3, W½NW¼ Lot 8; that portion of the SW¼ Lot 8 lying northwest of the northwesterly right-of-way line of Plumas County Road No. 114.

Section 17—E½ Lot 1, Lot 4, NE¼ Lot 6, S½ Lot 6, SE¼ Lot 7, SE¼ Lot 9, Lots 10 and 11; that portion of Lots 5 and 12 lying north and west of the northwesterly right-of-way line of Plumas County Road No. 114.

Section 19—S½NE¼, SE¼NW¼, E½SW¼, W½SE¼; that portion of S½ Lot 4 lying southeast of the southeasterly right-of-way line of Plumas County Road No. 115 and that portion of the E½SE¼ lying west and north of Plumas County Road No. 114.

Section 20—That portion of the N½NE¼, SW¼NE¼, SE¼NW¼, N½SW¼ lying northwest of the northwesterly right-of-way line of Plumas County Road No. 114; NE¼NW¼, NE¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼.

Section 30—N½NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, N½N½ Lot 3; that portion of Lot 4 lying southeast of the southeasterly right-of-way line of Plumas County Road No. 115.

T.22N., R.14E.—Add the following:

Section 3—Lots 3 and 4, S½NW¼.

T.23N., R.11E.—Delete entire present description, insert the following:

Section 8—S½S½[1]

Section 9—S½S½.

Section 10—Lot 11 W½ Lot 12, W½E½ Lot 12.

Section 13—That portion of the W½SW¼, W½SE¼SW¼ lying south and west of the southwesterly right-of-way line of Plumas County Road No. 509; that portion of SW¼SE¼SE¼SW¼ lying south and west of the southwesterly right-of-way line of the Western Pacific Railway Company.

Section 14—That portion of Lots 1, 2, 3, 7 and 8 lying south of the southerly right-of-way of the Western Pacific Railroad Company; that portion of Lot 4, S½SW¼NW¼ lying south and west of the southwesterly right-of-way line of Plumas County Road No. 509; N½ Lot 5, NE¼SE¼ Lot 5, Lot 6.

Section 15—That portion of the E½NE¼ lying south and west of the southerly right-of-way line of Plumas County Road No. 509. That portion of the W½NE¼ lying south of the line described as follows:

Starting at the intersection of the east line of the W½NE¼ with the south right-of-way of Plumas County Road No. 509; thence northwesterly along the south right-of-way line of Plumas County Road No. 509 to the intersection of said line with the southeasterly right-of-way line of Plumas County Road 509B; thence southwesterly along the southeasterly right-of-way line of Plumas County Road No. 509B to the intersection of said line with the south right-of-way line of the Western Pacific Railroad Company; thence northwesterly along the south right-of-way line of the Western Pacific Railroad Company to the west line of the W½NE¼.

Section 16—All.

Section 17—N½N½N½.[2]

Section 24—S½NE¼NE¼, NW¼NE¼, S½NE¼, NE¼NW¼, NE¼NW¼NW¼, N½NE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼.

T.23N., R.12E.—Delete entire present description, insert the following:

Section 19—That portion of the S½ Lot 1, Lot 2, SE¼NW¼, E½SW¼, SW¼SW¼SW¼SE¼ lying west of the westerly right-of-way line of California State Highway 70; Lots 3 and 4.

Section 29—That portion of the W½SW¼ lying west of the westerly right-of-way line of California State Highway 70.

Section 30—Lot 1, that portion of NE¼, E½NW¼, N½SE¼, E½SE¼SE¼ lying westerly of the westerly right-of-way line of California State Highway 70, NE¼NE¼SW¼.

[1]Describes all the land within the Wild and Scenic River Boundary in Section 8. The western terminus of the Recreation Zone of the Wild and Scenic River is a north-south line through the southern entrance of the Spring Garden Railroad Tunnel.

[2]Describes all the land within the Wild and Scenic River Boundary in Section 17. The western terminus of the Recreation Zone of the Wild and Scenic River is a north-south line through the southern entrance of the Spring Garden Railroad Tunnel.

Section 31—E½NE¼, S½N½ NW¼NE¼, S½NW¼NE¼.

Section 32—N½SW¼, SE¼SW¼; that portion of the NW¼, W½SE¼, SW¼SW¼NE¼ lying west of the westerly right-of-way line of California State Highway 70.

T.23N., R.13E.—Delete entire present description, insert the following:

Section 34—That portion of the E½SE¼SE¼ lying southeasterly of the westerly most line of Parcel 1 as shown on the map thereof filed July 12, 1974 in Book 4 of Parcel Maps, Page 92, Records of Plumas County, and further described as follows: Beginning at a point on the south boundary of Section 34 that lies west 660.00 feet from the southeast corner of Section 34, thence N44° 59' 27" E., 937.23 feet to a point on the east line of Section 34 that lies 660.00 feet north of the southeast corner of Section 34.

Section 35—That portion of the S½SW¼ lying south of the southerly right-of-way line of California State Highway 70, SW¼SW¼SE¼, SW¼SE¼SW¼SE¼, SE¼SE¼ SE¼SE¼.

Section 36—That portion of the SE¼NE¼, NE¼SW¼, S½SW¼, NE¼SE¼, W½SE¼ lying between the southeasterly right-of-way line of California State Highway 70 and the centerline of the mainline track of the Western Pacific Railway Company; that portion of the SE¼NE¼SE¼ lying northwesterly of the centerline of the mainline track of the Western Pacific Railroad Company; NE¼NE¼SE¼.

T.23N.; R.14E—Delete entire present description, insert the following:

Section 26—That portion of the W½SW¼NE¼, S½NW¼ lying south of the southerly right-of-way line of California State Highway 70; that portion of the NE¼SW¼, NW¼SW¼SE¼, SE¼SW¼, SW¼SW¼ lying north of the northerly right-of-way line of the Western Pacific Railroad Company; NW¼SW¼, W½NW¼SE¼.

Section 27—That portion of the N½ lying south of the southerly right-of-way line of California State Highway 70; SW¼, W½SE¼, NE¼SE¼.

Section 28—That portion lying south of the southerly right-of-way line of California State Highway 70.

Section 29—That portion of the N½ lying south of the southerly right-of-way line of California State Highway 70; N½S½.

Section 30—That portion of Lots 3 and 4, E½ lying south of the southerly right-of-way line of California State Highway 70.

Section 33—E½NE¼, NW¼NE¼, NE¼NW¼, NE¼SE¼.

Section 34:—W½NE¼, W½.

Summary of Effects of Proposed Boundary Adjustment

	Miles of River	Acres		
		F.S.	Other	Total
Current				
Recreation Zone	35	1,799	3,700	5,499
Recreation Zone Upond Publication of Bdry Adj.	35	2,272	6,711	8,983
Net Adjustment	0	+473	+3,011	+3,484

Status of Entire River

	Acres
Acres allowed by PL 90-542 and PL 94-486:	
82 Miles×320 Acres/Miles	=26,240
Current Acreage	20,303
Net Proposed Adjustment	+3,484
Acreage upon Publication of Bdry Adj	23,787

Number of additional landowners affected by planned acquisition within proposed adjustment: 0

Maps showing both the proposed and existing boundaries are available for public review in the office of the Plumas Forest Supervisor, 159 Lawrence Street, Quincy, California; Regional Forester, 630 Sansome Street, San Francisco, California, and Chief, Forest Service, 12th and Independence Avenue, SW., Washington, D.C.

Dated: July 1, 1980.

R. Mat Peterson,

Chief, Forest Service.

[FR Doc. 80-20633 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-11-M

Recommendations to the Secretary of the Interior for the Withdrawal of National Forest Lands Currently Segregated from Mineral Entry and State Selecton (subject to existing valid rights); Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, Alaska Region, intends to prepare a draft environmental impact statement concerning recommendations to the Secretary of the Interior for the withdrawal of National Forest System lands currently segregated from mineral entry and State selection (subject to existing valid rights).

Approximately 11.2 million acres of National Forest System lands in Alaska were segregated from these uses on December 5, 1978, for a 2-year period under the authority of Section 204(b)(1) of the Federal Land Policy and Management Act (FLPMA). The 11.2 million acres consisted of 25 separate areas and included the Misty Fiord and Admirality Island National Monuments which had also been withdrawn by the President at the same time that he made the monument proclamations on December 1, 1978.

All of the areas involved had been proposed for special classification. The 95th Congress considered the Administration's proposal as well as bills introduced in both the House and the Senate. Since the 95th Congress adjourned without completing action on the Alaska national interest land legislation, the decision was made to apply for a withdrawal under Section 204(b)(1) of the FLPMA to protect the scenic, historic, scientific, and/or primitive attributes of the area, and in aid of possible legislation. Congress did not reach agreement on the Alaska lands legislation in 1979, and pressing international and domestic issues may prevent action in 1980. With the 204(b)(1) segregation due to expire December 5, 1980, it is therefore appropriate to proceed as authorized by FLPMA and seek continued protection of the key units of the original withdrawal identified through the land management planning process and the RARE II effort.

Alternatives being considered in the environmental impact statement include withdrawal of some of all of the 25 areas at issue for a time period of 2, 5, or 20 years. The no-change alternative being considered would allow the present order to expire December 5, 1980.

The scoping process for this issue was included as a function of the Regional Plan issue identification. Future public involvement will be through formalized hearings as requried by FLPMA. Hearings are tentatively scheduled for September 1980, in Ketchikan, Juneau, Sitka, and Anchorage. They will be announced in local newspapers.

The responsible official is Secretary of Agriculture Bob Bergland. The draft environmental impact statement is expected to be released in August 1980.

Questions about the proposed action and the environmental impact statement should be directed to Jim Pierce, the Interdisciplinary Team Leader for the Alaska Region (907-586-7516).

Written comments and suggestions concerning this analysis should be sent to John A. Sandor, Regional Forester, USDA-Forest Service, P.O. Box 1628, Juneau, Alaska 99802, by July 15, 1980.

Dated: July 3, 1980

Jerome A. Miles,

Acting Chief.

[FR Doc. 80-20632 Filed 7-10-80; 8:45 am]

BILLNG CODE 3410-11-M

Carson National Forest Grazing Advisory Boards; Meetings

The West Carson Grazing Advisory Board will meet at 10:00 a.m. on August

2, 1980, on the Apache Allotment of the Tres Piedras Ranger District, Tres Piedras, New Mexico.

The East Carson Grazing Advisory Board will meet at 10:00 a.m. on July 26, 1980, on La Lama Allotment of the Questa Ranger District, Questa, New Mexico.

The purpose of the meetings will be to discuss the expenditure of Range Betterment Funds and the status of Management Plans.

The meetings will be open to the public. Persons who wish to attend should notify Ken Bishop, Telephone 505/758-2237, P.O. Box 558, Taos, New Mexico 87571.

Written statements may be filed before or during the meetings.

Dated: July 3, 1980.

Jack Crellin,

Forest Supervisor.

[FR Doc. 80-20772 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Draft Environmental Impact Statement and Notice of Public Hearing

Notice is hereby given that the Rural Electrification Administration as lead Federal agency has prepared a Draft Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with potential financial assistance to East Kentucky Power Cooperative (East Kentucky), P.O. Box 707, Winchester, Kentucky 40391. The U.S. Environmental Protection Agency, Region IV; U.S. Army Corps of Engineers, Louisville District; U.S. Department of the Interior (U.S. Fish and Wildlife Service) and Kentucky Department for Natural Resources and Environmental Protection have acted as cooperating agencies during the NEPA process.

The anticipated financial assistance would allow East Kentucky to secure funds required for the construction of a proposed steam-electric generating station near Trapp, Clark County, Kentucky. The project consists of two 650 MW (gross) coal-fired generating units scheduled for operation in 1985 and 1987 respectively, and ancillary facilities. Proposed electric transmission associated with the project involves three 345 kV lines from the Smith Plant to the Avon Substation, (24 km), to the Maggard Substation (92 km), to the Brodhead Substation (59 km); one 161 kV line from Brodhead Substation to Tyner Substation (44.7 km); and four 138 kV lines from the Smith Plant to Lake Reba (14.8 km), Stanton (19.6 km), Spencer Road (24.9 km), and the Dale Station (13.2 km). The project will provide a reliable source of electrical power to fill existing and projected future needs of East Kentucky's member distribution cooperatives.

The Kentucky Department for Natural Resources and Environmental Protection published a public notice of Preliminary Determination under the regulations for Prevention of Significant Air Quality Deterioration (PSD) on May 27, 1980. EPA is presently completing its review, and upon close of the 30-day public notice period ending June 26, 1980, will proceed to final determination relative to giving approval to construct the facility under PSD regulations, 40 CFR 52.21.

The U.S. Environmental Protection Agency proposes to issue a National Pollutant Discharge Elimination System (NPDES) Permit, NPDES and application number KY0055972. The permit application describes seven proposed discharges from construction and operation of the facility which will generate and transmit electricity SIC Code 4911. The site is located adjacent to the Kentucky River and Upper Howard Creek in the vicinity of Kentucky River Mile 188. Discharges from 001 will enter the Kentucky River; from 002 and 007 will enter Bull Run; and from 003 to 006 will enter Upper Howard Creek. These streams have been classified by the Commonwealth of Kentucky for all uses. The Kentucky Department for Natural Resources and Environmental Protection has been requested to certify the discharge(s) in accordance with the provisions of Section 401 of the Clean Water Act (33 U.S.C. Section 1251 et seq.).

The proposed NPDES permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. Section 1251 et seq.) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public both in writing and at the public hearing.

A fact sheet which outlines the applicant's proposed discharge(s) and EPA's proposed pollutant limitations and conditions is available by writing or calling the EPA. A copy of the draft permit is also available from EPA. The administrative record including the application, draft permit, fact sheet, environmental impact statement, comments received, and other information are available for review and copying at 345 Courtland Street, second floor, Atlanta, Georgia, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. A copying machine is available for public use at a charge of 20¢ per page.

In order to foster further public participation on the proposed financial assistance, necessary permits, determinations and approvals for the proposed project, the Rural Electrification Administration in conjuntion with the U.S. Environmental Protection Agency and the Kentucky Department for Natural Resources and Environmental Protection will hold a public hearing. The hearing is scheduled for Monday, August 11, 1980, and will begin at 7:30 p.m. in the Trapp Elementary School on State Highway 89, approximately 10 miles southeast of Winchester, Kentucky. The hearing panel will include representative's from REA and EPA and Commonwealth of Kentucky.

Both oral and written comments will be accepted and a transcript of the proceedings will be made. For the accuracy of the record, written coments are encouraged. The Hearing Officer reserves the right to fix reasonable limits on the time allowed for oral statements.

Additional information on the porposed project may be secured from Mr. Frank W. Bennett, Director of Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Persons wishing to comment upon or object to the project, the Draft Environmental Impact Statement, approval of financial assistance, the NPDES permit issuance, the proposed permit limitations and conditions and the State certification are invited to respond in writing on or before August 25, 1980 or EPA's notice of availability of the Draft EIS, whichever is later. Comments are invited from the public and particularly from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the Federal Draft Environmental Impact Statement have been sent to various Federal, state, and local agencies, as outlined in the Council on Environmental Quality regulations. Limited supplies of the Draft Environmental Impact Statement are available upon request to Mr. Bennett at the address given above. Copies of the Draft Environmental Impact Statement, which includes the Environmental Analysis, Preliminary Determination, and draft NPDES permit may be

examined during regular business hours at the following locations:

Rural Electrification Administration, USDA, 14th and Independence Avenue, S.W., Room 5831, Washington, D.C. 20250.

U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

Kentucky Department for Natural Resources and Environmental Protection, Century Plaza, U.S. 127 South, Frankfurt, Kentucky 40601.

Libraries

Clark County Public Library, 109 S. Main Street, Winchester, Kentucky 40391.

Kennedy Memorial Library, West Liberty, Kentucky 41472.

Lexington Public Library, 251 West 2nd Street, Lexington, Kentucky 40500.

Madison County Public Library, 345 Lancaster Avenue, Richmond, Kentucky 40475.

Menifee County Public Library French Burg, Kentucky 40322.

Powell County Public Library, Court Street, Stanton, Kentucky 40380.

Mt. Sterling Public Library, 117 West High Street, Mt. Sterling, Kentucky 40353.

Owsley County Public Library, Booneville, Kentucky 41314.

Persons, organizations and agencies wishing to comment should do so in writing within the 45-day period indicated above and address their correspondence to Mr. Bennett of REA at the address given above, the Enforcement Division, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Attention: Mr. Charles H. Kaplan; and the Kentucky Department for Natural Resources and Environmental Protection, Century Plaza, U.S. 127 South, Frankfort, Kentucky 40601, Attention: Mr. Clyde P. Baldwin. The NPDES number (KY0055972) should be included in the first page of comments. All comments received within the 45-day period will be considered in the formulation of final determinations regarding the approval of REA funding of the project, the Final Environmental Impact Statement, the NPDES permit, and permit conditions, and the State certification. Response to all substantive comments made at the public hearing will be published in the Final Environmental Impact Statement.

The EPA Regional Administrator has elected to use the nonadversary procedures for initial licensing in processing the NPDES permit.

Request for a panel hearing on the NPDES permit pursuant to the nonadversary procedures for initial licensing may be filed in accordance with 40 CFR 124.114 prior to the close of the comment period. Such requests must contain the items specified in 40 CFR 124.114. Additional information regarding panel hearings can be found at 40 CFR, part 124, subpart I (44 FR 32944, June 7, 1979) or by contacting the Legal Branch at the Enforcement Division, EPA, at the above address or at 404–881–2641.

Final REA and EPA action pursuant to this proposed East Kentucky project (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 and requirements of other environmentally related statutes, regulations, and Executive Orders have been met.

Dated at Washington, D.C., this 2nd day of July, 1980.

Robert Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-20745 Filed 7-10-80; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Docket 34851; Order 80-7-46]

Application of Deutsche Lufthansa Aktiengesellschaft

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Board proposes to approve the following application:

Applicant: Deutsche Lufthansa Aktiengesellschaft.

Application Date: February 27, 1979.

Authority Sought: amendment of its foreign air carrier permit to authorize it to engage in foreign air transportation of persons, property, and mail as follows between a point or points in Germany; directly and via intermediate points; and the coterminal points Anchorage, Alaska, Atlanta, Ga., Boston, Mass., Chicago, Ill., Dallas/Ft. Worth, Texas, Los Angeles, Ca., Miami, Fla., New York, New York, Philadelphia, Pa., San Francisco, Ca., and San Juan, P.R.; and beyond to any points outside the United States of America; without directional limitation.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, No Later Than August 1, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of the Federal Republic of Germany in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:

Docket 34851, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

G. Nathan Calkins, Arthur D. Berstein, Suzette Matthews, Galland, Kharasch, Calkins & Short, 1054 Thirty-First Street, N.W., Washington, D.C. 20007, (Attorneys for Deutsche Lufthansa Aktiengesellschaft).

To Get a Copy of The Complete Order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For Further Information, contact Jeffrey B. Gaynes, Legal Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5035.

By the Civil Aeronautics Board: July 8, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20704 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38033; Order 80-7-47]

Application of Guyana Airways Corp.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Board proposes to approve the following application:

Applicant: Guyana Airways Corporation.

Application Date: April 11, 1980.

Authority Sought: Amendment of foreign air carrier permit to add passenger authority between Guyana and Miami via intermediate points.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, No Later Than July 31, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Guyana in Washington, D.C. A statement of objections must cite

the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Addresses for objections:
Docket 38033, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.
Guyana Airways Corporation, c/o V. Michael Strauss, 1001 Connecticut Avenue NW., Suite 401, Washington, D.C. 20036.

To Get a Copy of the Complete Order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For Further Information, contact Alice Larkin, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: July 8, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20705 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37559; Order 80-7-48]

Application of Thai Airways International Ltd.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Board proposes to approve the following application:

Applicant: Thai Airways International Limited.

Application Date: January 30, 1980.

Authority Sought: Foreign air carrier permit to operate scheduled air service between Thailand and Los Angeles, California and Dallas/Fort Worth, Texas via Tokyo, Japan and Seattle, Washington, and specified charter air services.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that these actions should be taken as described in the order cited above, shall, No Later Than August 4, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Thailand in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

Address objections to:
Docket 37559, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.
Applicant: Thai Airways International Limited, c/o R. Tenney Johnson, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

To Get a Copy of the Complete Order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For Further Information, contact Nancy L. Pitzer, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: July 8, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-20706 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended July 3, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the appliaction. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed, Docket No. and Description

7-1-80—38406, Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public convenience and necessity for Route 107 so as to authorize it to engage in nonstop scheduled air transportation of persons, property and mail between the terminal point St. Louis, Missouri, and the alternate terminal points:
Providence, Rhode Island
Charleston, South Carolina
Jackson/Vicksburg, Mississippi
Columbia, South Carolina
Shreveport, Louisiana
Savannah, Georgia
Harrisburg/York, Pennsylvania
Lexington, Kentucky
Mobile, Alabama/Pascagoula, Mississippi
Greenville/Spartanburg, South Carolina
Chattanooga, Tennessee
Allentown/Bethlehem/Easton, Pennsylvania
Harlingen/San Benito, Texas
San Antonio, Texas
Midland/Odessa, Texas
Baton Rouge, Louisiana
Fort Wayne, Indiana
Evansville, Indiana
Huntsville and Decatur, Alabama
Akron/Canton, Ohio
Charleston/Dunbar, West Virginia
Montgomery, Alabama
South Bend, Indiana
Lansing, Michigan
Saginaw/Bay City/Midland, Michigan
Augusta, Georgia
Melbourne, Florida
Eugene, Oregon
Salinas/Monterey, California
Scranton/Wilkes-Barre, Pennsylvania
Fargo, North Dakota/Moorhead, Minnesota
Asheville, North Carolina
Bangor, Maine
Columbus, Georgia
Gainesville, Florida
Grand Junction, Colorado
Santa Barbara, California
Newport News/Hampton, Virginia
Conforming Applications and Answers are duel July 28, 1980.

7-1-80—38407, Continental Air Lines, Inc., Los Angeles International Airport, Los Angeles, California 90009. Conforming Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests the Board to amend its certificate of public convenience and necessity for route 29 so as to authorize it to perform round trip nonstop air transportation between Denver, Colorado and Sioux Falls, South Dakota.
Answers may be filed by July 21, 1980.

7-1-80—38416, Air California, c/o John W. Simpson, Koteen & Burt, 1150 Connecticut

Avenue, N.W., Washington, D.C. 20036. Application of Air California pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests the Board to grant it authority to engage in schedule air transportation of persons, property and mail between Los Angeles, California on the one hand and Monterey and Fresno, California on the other and between Fresno, California and San Francisco, California on the other.

Conforming Applications and Answers may be filed by July 29, 1980.

7-3-80—38428, World Airways, Inc., c/o Allen L. Lear, Zuckert, Scoutt & Rasenberger, 888 Seventeenth Street, N.W., Washington, D.C. 20006. Application of World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests that its certificate of public convenience and necessity for Route 192 be amended so as to authorize the nonstop air transportation of persons, property, and mail between Boston, Massachusetts and Cleveland, Ohio.

Conforming Applications and Answers may be filed July 31, 1980.

7-3-80—38434, Frontier Airlines, Inc., 8250 Smith Road, Denver, Colorado 80207. Application of Frontier Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public convenience and necessity for Route 73 to authorize nonstop service between Denver, Colorado on the one hand, and Sioux Falls, South Dakota, on the other hand.

Conforming Applications and Answers are due July 21, 1980.

[FR Doc. 80-20703 Filed 7-10-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

National Voluntary Laboratory Accreditation Program (NVLAP); Quarterly Report

This quarterly report covers the period from April 1 to June 30, 1980, and has been prepared in accordance with §§ 7a.17(a), 7b.17(a), and 7c.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b, and 7c).

An amendment to the NVLAP procedures, published in the Federal Register on April 21, 1980 (45 FR 26993–26994), provides a method by which additional standards and test methods can be included in the list of standards and test methods in a laboratory accreditation program (LAP) established for a specific product under NVLAP procedures. The additional carpet methods listed in the January 23, 1980 Federal Register notice (45 FR 5572–5600) announcing final criteria and fees for accrediting laboratories that test thermal insulation materials (insulation LAP), freshly mixed field concrete (concrete LAP), and carpet (carpet LAP) became an official part of the carpet LAP as of April 21, 1980.

No accreditation actions were taken during the second quarter of 1980. However, a total of 99 formal applications for accreditation were received in response to the January 23, 1980 Federal Register notice. This is the second round of accreditation determinations under the insulation LAP and the first round for the concrete and carpet LAPs. The opening of the next round will be announced within the next six months. The names of the applicants currently undergoing assessments are set forth below.

The 30 applicants denoted by an asterisk (*) have already been accredited for certain test methods under the insulation LAP (see the January 14, 1980 Federal Register notice, 45 FR 2682–2699, for the list of tests methods for which each laboratory is accredited). These 30 accredited laboratories are applying for a one-year renewal of their accreditation which would otherwise expire on October 11, 1980.

Laboratories Undergoing Assessment in the Insulation LAP

Butler Manufacturing Co. (Grandview, MO)*
Certainteed Corp. (Blue Bell, PA)*
Certified Testing Laboratories, Inc. (Dalton, GA)*
Commercial Testing Co. (Dalton, GA)*
Dow Chemical, U.S.A. (Granville, OH)*
Dynatech R/D Co. (Cambridge, MA)*
Dynatherm Engineering (Lino Lakes, MN)*
Factory Mutual Research Corp. (Norwood, MA)*
Geoscience, Ltd. (Solana Beach, CA)
Hardwood Plywood Manufacturers Association (Reston, VA)*
Hauser Laboratories (Boulder, CO)*
INTEST Laboratories, Inc. (Minneapolis, MN)*
Jim Walter Research Corp, (St. Petersburg, FL)*
Johns-Manville Sales Corp. (Denver, CO)*
Lander Thermal Conductivity Lab. (Minneapolis, MN)*
NAHB Research Foundation (Rockville, MD)*
Olin Corporation (New Haven, CT)
Owens Corning Fiberglas Corp., Tech. Center (Granville, OH)*
Owens Corning Fiberglas Corp., (Barrington, NJ)*
Owens Corning Fiberglas Corp., (Delmar, NY)*
Owens Corning Fiberglas Corp., (Kansas City, KN)*
Owens Corning Fiberglas Corp., (Fairburn, GA)*
Owens Corning Fiberglas Corp., (Newark, OH)*
Owens Corning Fiberglas Corp., (Santa Clara, CA)*
Owens Corning Fiberglas Corp., (Waxahachie, TX)*
Pabco R & D Labs (Fruita, CO)*
Southwest Research Institute (San Antonio, TX)*
Sparrell Engineering Research Corp. (Damariscotta, ME)*
Technical Micronics Control, Inc. (Huntsville, AL)*
Terralab Engineers (Salt Lake City, UT)
Thermton Research Laboratory (Fort Wayne, IN)
Twin City Testing & Engineering Laboratory, Inc. (St. Paul, MN)
Underwriters Laboratories, Inc. (Northbrook, IL)*
Underwriters Laboratories, Inc. (Santa Clara, CA)*
Upjohn Co./Donald S. Gilmore Laboratories (North Haven, CT)
U.S. Testing Co., Inc. (Hoboken, NJ)*
U.S. Testing Co., Inc., (Los Angeles, CA)*
U.S. Testing Co., Inc., (Tulsa, OK)*

Laboratories Undergoing Assessment in the Concrete LAP

Aguirre Engineers, Inc. (Englewood, CO)
American Admixtures Corp. (Chicago, IL)
American Testing Laboratories, Inc. (Lancaster, PA)
Arizona Sand & Rock Co. (Phoenix, AZ)
Arundel Corp. Greenspring Laboratory (Baltimore, MD)
ATEC Associates, Inc. (Cincinnati, OH)
Atlantic Testing Laboratories, Ltd. (Cicero, NY)
Bowser-Morner Testing Labs., Inc. (Dayton, OH)
Bowser-Morner Testing Labs., Inc. (Maysville, KY)
Bowser-Morner Testing Labs., Inc. (Toledo, OH)
Capitol Cement (San Antonio, TX)
Central Ready Mixed Concrete R&T Center (Milwaukee, WI)
Contractor Supply Corp. of W. Va., Inc. (Wheeling, WV)
Controlled Concrete Methods, Inc. (Tarrytown, NY)
Diversified Concrete Products R&D Center (Santa Ana, CA)
Dolese Company Eng. Dept. Lab. (Oklahoma City, OK)
Engineering Testing Laboratory (Akron, OH)
Engineers Testing Labs, Inc. (Phoenix, AZ)
Flintkote Stone Products Co. (White Marsh, MD)
Franklin Research Center (Philadelphia, PA)
GARCO Testing Laboratories (Murray, UT)
General Testing Laboratories, Inc. (Kansas City, MO)
H. C. Nutting Co. (Cincinnati, OH)
Hales Testing Laboratories, Inc. (Hayward, CA)
Herron Consultants, Inc. (Cleveland, OH)
Kelso Industries, Inc. Bldg. Matls. Div. (Galveston, TX)
Lewis Engineering, Inc. (Plainfield, IN)
Lowry Testing Laboratories (Sacramento, CA)
Material Service Corp. (Chicago, IL)
Materials Testing Consultants, Inc. (Grand Rapids, MI)
Northern Testing Laboratories, Inc. (Boise, ID)
Northern Testing Laboratories, Inc. (Billings, MT)
Northern Testing Laboratories, Inc. (Great Falls, MT)

Portland Cement Assoc. Const. Tech. Labs (Skokie, IL)
Smith-Emery Company (Los Angeles, CA)
Soil Testing Services of Carolina, Inc. (Research Triangle Park, NC)
Soil Testing Services, Inc. (Northbrook, IL)
Southwestern Laboratories (Houston, TX)
Standard Testing & Engineering (Oklahoma City, OK)
Tanner Companies United Metro Div. Lab. (Phoenix, AZ)
Testing Engineers, Inc. (Oakland, CA)
Testing Engineers, Inc. (Santa Clara, CA)
Testing Laboratories, Inc. (Alamogordo, NM)
Texas Testing Laboratories, Inc. (Dallas, TX)
Twin City Testing & Engineering Laboratory, Inc. (St. Paul, MN)
U.S. Testing Co., Inc. (Hoboken, NJ)
W. R. Grace & Co.-CPD Lab. (Cambridge, MA)
Walter Keeler Co., Inc. (Wichita, KS)
Walter H. Flood & Co., Inc. (Hillside, IL)

Laboratories Undergoing Assessment in the Carpet LAP

American Carpet Laboratories, Inc. (Ringgold, GA)
Armstrong Cork Co. (Marietta, PA)
Bigelow-Sanford, Georgia Rug Mills, Q.C. Labs. (Summerville, GA)
Bigelow-Sanford, Inc. Technical Services, (Greenville, SC)
C. H. Maslund & Sons (Carlisle, PA)
Certified Testing Laboratories, Inc. (Dalton, GA)
Chisholm Trail Testing and Engineering Co., Inc. (Decatur, TX)
Commercial Testing Co. (Dalton, GA)
Coronet Carpets (Dalton, GA)
Evans & Black Carpet Mills, Inc. (Dalton, GA)
Factory Mutual Research Corp. (Norwood, MA)
Galaxy Testing Laboratory (Chatsworth, GA)
Hardwood Plywood Manufacturers Association (Reston, VA)
Independent Textile Testing Service, Inc. (Dalton, GA)
Mohasco Corp. Physical Testing Lab. (Amsterdam, NY)
Shaw Industries, Inc. Q.C. Lab (Dalton, GA)
Southwest Research Institute, (San Antonio, TX)
Technical Micronics Control, Inc. (Huntsville, AL)
Terralab Engineers (Salt Lake City, UT)
Trend/Roxbury Div. of WWG Industries, Inc. (Rome, GA)
Underwriters Laboratories, Inc. (Northbrook, IL)
U.S. Testing Co., Inc. (Hoboken, NJ)
U.S. Testing Co., Inc. (Los Angeles, CA)
World Carpets, Inc. (Dalton, GA)

Dated: July 8, 1980.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 80-20702 Filed 7-10-80; 8:45 am]

BILLING CODE 3510-13-M

U.S. Travel Service

Travel Advisory Board; Rescheduled Meeting

On June 12, 1980, notice was given that the Travel Advisory Board would meet on July 24, 1980 (45 FR 39884). Notice is hereby given that the Travel Advisory Board meeting has been rescheduled for August 26, 1980, at 9:00 a.m., in Room 6802 of the Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements will be allowed.

Sue Barbour, Travel Advisory Board Liaison Officer, the United States Travel Service, Room 1858, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377-4752, will respond to public requests for information about the meeting.

Joanne Westphal,

Acting Assistant Secretary for Tourism, Department of Commerce.

[FR Doc. 80-20690 Filed 7-10-80; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 11, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 9, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (45 FR 30667) of proposed additions to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 7340—Flatware, Plastic, Picnic 7340-00-170-8374, 7340-00-205-3187, 7340-00-205-3342, (For GSA Regions 2, 3, 5, 6).

Class 9905—Tag, Marker, 9905-00-537-8954.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-20693 Filed 7-10-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1980 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 13, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested parties an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 7920—Paper Towel, Disposal Wiper, 7920-00-823-9773.

SIC 7349—Janitorial/Custodial Service, Base Education Trailers, Fairchild Air Force Base, Spokane, Washington.

SIC 7538—Rebuilding Automotive Components, GSA Interagency Motor Pool, USPO & Courthouse, Newark, New Jersey.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-20694 Filed 7-10-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1980; Proposed Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed deletion from procurement list.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1980 a commodity produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 13, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested parties an opportunity to submit comments on the possible impact of the proposed action.

It is proposed to delete the following commodity from Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 7530—Folder Set, File, 7530–00–281–5905.

C. W. Fletcher,

Executive Director.

[FR Doc. 80–20695 Filed 7–10–80; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Composite Environmental Statement (DSES) for Maintenance Dredging of Existing Navigation Projects in the San Francisco Bay Region, California

AGENCY: Department of Defense, San Francisco District, U.S. Army Corps of Engineers.

ACTION: Notice of Intent to prepare a Draft Supplement Environmental Statement.

SUMMARY:

1. *Proposed Action:* The San Francisco District, U.S. Army Corps of Engineers, performs maintenance dredging for 12 Federal navigation projects in San Francisco Bay and issues permits for other non-federal navigation projects in the Bay. In December of 1975 the Final Composite Environmental Statement for these projects was filed by the San Francisco District. The DSES will evaluate possible modifications to the on-going maintenance dredging program in San Francisco Bay.

2. *Alternatives:* The alternative methods of dredging and disposal to be considered are:

a. Clamshell dredge and barge (aquatic disposal).

b. Hopper dredge (aquatic disposal).

c. Hydraulic pipeline dredge (aquatic disposal).

d. Hydraulic pipeline dredge (land disposal).

3. *Scoping Process:*

a. A scoping meeting will be held on 29 July 1980, 10:30 am, at the Corps of Engineers San Francisco Bay Delta Model and Regional Visitors Center Multipurpose Room, 2100 Bridgeway Road, Sausalito, California. All interested government agencies, public interest groups, and individuals are invited to particpate in the scoping process.

b. The primary purpose of the scoping process is to identify the significant issues to be analyzed in the DSES. To date, without benefit of the formal scoping session, significant issues appear to be related to water quality impacts at the dredge and disposal sites; impacts on biological communities at the dredge and disposal sites; and availability of land disposal sites versus open water disposal.

c. The necessary degree of coordination will be carried out as required by the Fish and Wildlife Coordination Act, Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act.

d. It is estimated that the DSES will be released to the public and filed with the U.S. Environmental Protection Agency in December 1981.

e. Questions pertaining to the proposed action can be referred to Barney Opton, Environmental Branch, San Francisco District, Corps of Engineers, 211 Main St., San Francisco, California 94105 (Telephone 415–556–0325).

Dated: June 19, 1980.

Paul Bazilwich, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80–20793 Filed 7–10–80; 8:45 am]

BILLING CODE 3710–FS–M

Department of the Army

Privacy Act of 1974; Deletion and Amendments to Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of deletion and amendments to systems of records.

SUMMARY: The Army proposes to delete 1 and amend 5 systems of records subject to the Privacy Act of 1974. Specific changes to the systems being amended are set forth below, followed by the systems published in their entirety as amended.

DATE: The systems shall be amended as proposed without further notice on August 11, 1980, unless comments are received on or before August 11, 1980, which would result in a contrary determination and require republication for further comments.

ADDRESS: Any comments, including written data, views or arguments concerning the action proposed should be addressed to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cyrus H. Fraker, The Adjutant General's Office (DAAG–AMR–R), 1000 Independence Avenue, SW, Washington, DC 20314; telephone 202/693–0973.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices, as prescribed by the Privacy Act of 1974, have been published in the Federal Register as follows:

FR Doc. 79–37052 (44 FR 73729) December 17, 1979
FR Doc. 80–594 (45 FR 1658) January 8, 1980
FR Doc. 80–3891 (45 FR 8399) February 7, 1980
FR Doc. 80–7515 (45 FR 15736) March 11, 1980
FR Doc. 80–9633 (45 FR 20092) March 31, 1980
FR Doc. 80–10014 (45 FR 21673) April 2, 1980
FR Doc. 80–150501–M (45 FR 26117) April 17, 1980
FR Doc. 80–13708 (45 FR 29390) May 2, 1980

Proposed amendments are not within the purview of the provisions of 5 USC 552a(o) of the act which require the submission of a new or altered system report.

July 7, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

Deletion

A1014.07bDAPE

SYSTEM NAME:

1014.07 Correspondence School Basic Data File (44 FR 73972), December 17, 1979.

REASON:

Records are covered in system notice A1012.04hDAMO NDU Student Data Files (45 FR 21674), April 2, 1980, as corrected by 45 FR 26117, April 17, 1980.

Amendments

A0225.11bDAAG

SYSTEM NAME:

225.11 USA Individual Ready, Standby and Retired Reserve Personnel Information System (44 FR 73781), December 17, 1979.

CHANGES:

SYSTEM NAME:

Insert word "The" between "225.11" and "USA".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete phrase "not more than 15 days annual" and word "field".

RETENTION AND DISPOSAL:

Change word "two" to Arabic numeral "6".

NOTIFICATION PROCEDURE:

Change telephone to "Area Code 314/263–7733".

A0225.11fDAPC

SYSTEM NAME:

225.11 Enlisted Year Group Management File/RETAIN (44 FR 73782), December 17, 1979.

CHANGES:

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to "Automated" records: "basic pay entry date, promotional status (MOS), special skill identifier, additional skill identifier".

A0708.21aTRADOC

SYSTEM NAME:

708.21 MASSTER Personnel Information System (44 FR 73879), December 17, 1979.

CHANGES:

SYSTEM NAME:

Delete "MASSTER" and substitute "TCATA".

SYSTEM LOCATION:

Delete "Resource Management, Military Personnel Branch, Headquarters Modern Army Selected Systems Test Evaluation Review (MASSTER), ATMAS–RM–PM" and substitute "Personnel and Administration, Personnel Branch, Headquarters (HQ) TRADOC Combined Arms Test Activity (TCATA), ATCAT–SPT–AGA".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "MASSTER" and substitute "TCATA".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete "MASSTER" and substitute "TCATA".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete "MASSTER" and substitute "TCATA".

RETRIEVABILITY:

Following "SSN", add "and name".

SYSTEM MANAGER(S) AND ADDRESS:

Delete "Military Personnel Branch, ATMAS–RM–PM" and substitute "Personnel Branch, ATCAT–SPT–AGA, Headquarters TRADOC Combined Arms Test Activity".

RECORD SOURCE CATEGORIES:

Following "Employee Record Cards" add "TDY Orders and TDY Vouchers".

A0710.10DAAG

SYSTEM NAME:

710.10 Reserve Personnel Information Reporting System (44 FR 73911), December 17, 1979.

CHANGES:

RETRIEVABILITY:

In first sentence, after "SSN", add "within unit identification code".

RETENTION AND DISPOSAL:

Delete entry and substitute "A record is retained for the duration of the reservist's unit assignment".

CONUS: The current tape file and the two previous tape files are retained at any given time.

OVERSEAS: Record files are retained for historical data reporting as follows: 4 years for reports for months of March, June, and December; 6 years for the report month of September; and 2 years for all other report months."

A0807.01DAAG

SYSTEM NAME:

807.01 MCT USAR Civilian Technician System (44 FR 73911), December 17, 1979.

CHANGES:

SYSTEM NAME:

Delete the word "Civilian".

SYSTEM LOCATION:

Following "Decentralized Segments:", delete entry and substitute "Deputy Chief of Staff for Personnel (DCSPER) and DA Staff agencies and commands."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete "US Army Reserve Civilian Technician" and substitute "United States Army Reserve (USAR) Technician".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete third paragraph and substitute "DCSPER: To Monitor and provide policy guidance and budget planning for the program."

RETRIEVABILITY:

Delete "within unit identification code of unit to which assigned".

SAFEGUARDS:

In second paragraph, delete "OCAR" and substitute "DCSPER".

RETENTION AND DISPOSAL:

In second paragraph, delete "OCAR" and substitute "DCSPER".

SYSTEM MANAGER(S) AND ADDRESS:

Delete "The Chief of Army Reserve" and substitute "Deputy Chief of Staff for Personnel (DAPE–MPO)".

NOTIFICATION PROCEDURE:

Delete entry and substitute: "Information may be obtained from: Deputy Chief of Staff for Personnel (DAPE–MPO), Room 2B–718, The Pentagon, Washington, DC 20310; telephone: Area Code 202/695–3837".

RECORD ACCESS PROCEDURES:

Delete "HQDA, OCAR, ATTN: DAAR–PE" and substitute "Headquarters, Department of the Army, Deputy Chief of Staff for Personnel, ATTN: DAPE–MPO".

CONTESTING RECORD PROCEDURES:

Delete "HQDA, OCAR (DAAR–PE), Washington, DC 20310" and substitute "the SYSMANAGER, ATTN: DAPE–MPO".

RECORD SOURCE CATEGORIES:

Delete entry and substitute "Data coded on DA Forms 3615–R, Strength and Utilization of USAR Technicians, are transmitted by DA Form 200 from the employing USAR command to RCPAC via the United States Postal Service. Processed data are returned to authorized agencies by reports".

A0225.11bDAAG

SYSTEM NAME:

225.11 The USA Individual Ready, Standby and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

Automated Equipment Division, Systems Support Directorate, United States Army Reserve Components Personnel and Administration Center

(RCPAC), ATTN: AGUZ-SSD, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the United States Army Reserve who are not assigned to a Reserve unit and not serving on extended active duty in an enlisted reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains personal and military status and qualifications data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 275.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RCPAC, Department of the Army Staff and command agencies, and Department of Defense and components thereof: The data records are primarily used to select qualified members for assignment to active Army units and mobilized reserve component units in the event of mobilization during a national emergency. Record is also used to support day-to-day personnel management and administration. Specifically, these uses include: selecting qualified personnel for potential assignment to reserve units based on military occupational specialty, grade, and geographical location; selecting and ordering individuals to military active duty training; identifying personnel for promotion consideration; identifying individuals not qualified for retention in the reserve; issuing annual statements of retirement credits; printing statements of total retirement credits; and publishing orders directing personnel actions and training.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and disks.

RETRIEVABILITY:

Filed numerically, social security number (SSN) ascending.

SAFEGUARDS:

Computer located in building which has entrance controlled by Federal Protective Officers. An ID badge is required to enter building and a different floor badge is required to enter the floor. The tape and disk library is a fireproof vault with a safe combination door plus a steel bar key-locked door. The functional and systems directors approve production requests for both one-time and recurring information.

RETENTION AND DISPOSAL:

Records are maintained for 6 years after completion of statutory or contractual reserve commitment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132.

NOTIFICATION PROCEDURE:

Information may be obtained from: Commander, United States Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132; telephone: Area Code 314/263-7733.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Commander, United States Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132.

Written requests from individuals should contain full name, SSN, and address.

For personal visits, the individual should provide acceptable identification such as a driver's license.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Official Military Personnel File and Military Personnel Records Jacket.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0225.11fDAPC

SYSTEM NAME:

225.11 Enlisted Year Group Management File/RETAIN.

SYSTEM LOCATION:

Department of the Army (DA), United States Army Military Personnel Center (DAPC-EP), Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the United States Army in elisted grades of E1 through E9 and former military personnel who are applicants for enlistment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated: File contains control number, reclassification/enlistment action, type of enlistment, social security number (SSN), pay grade, race, sex, basic active service date, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty (PMOS), PMOS evaluation score, new career management file (CMF), new PMOS, date of award of new PMOS, source of new PMOS, personnel charged to school code, status of application, assignment code, date of last status change, current location, year group, name, Security Investigation Status (SIS), terms reenlisted, basic pay entry date, promotional status (MOS), special skill identifier, additional skill identifier.

MANUAL: File contains name, control number, reclassification/enlistment action, type of enlistment, SSN, pay grade, race, sex, basic active service date, estimated termination of service, Armed Forces Qualification Test score, civilian education, promotion list status, reenlistment bonus status, security clearance, marital status, reenlistment date, physical profile status with code, career counselor with location, pay entry basic date, current/last overseas area, date eligible to return from overseas, date departed United States, waiver required, citizenship status, aptitude area scores, school/assignments requested, assignment confirmation, orders information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301; Title 10 U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DA: Records are used for personnel management, year group management, and manpower management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer magnetic tapes and disk and as paper records in file folders.

RETRIEVABILITY:

Normal access is by name, SSN, control number or other individual characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software safeguard features and personnel

clearances for individuals working with the system.

RETENTION AND DISPOSAL:

Computer tapes are cut off annually, and are retained up to 5 years; hard copy files are cut off annually and retained up to 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from: Headquarters, Department of the Army, United States Army Military Personnel Center (DAP-EP), Hoffman Building I, 2461 Eisnehower Avenue, Alexandria, VA 22331.

RECORD ACCESS PROCEDURES:

Written requests for information should contain the full name of the requester, SSN, current or former military status, and appropriate return address.

Personal visits may be made to the United States Army Military Personnel Center; individuals should be able to provide their military service identification and DD Form 2A for active duty personnel, or other commonly acceptable means of identification used in normal transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER, ATTN: DAPC-MSO.

RECORD SOURCE CATEGORIES:

Information is obtained from the applicant, DA personnel records, computer reports, and from other DA organizations and stations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0708.21aTRADOC

SYSTEM NAME:

708.21 TCATA Personnel Information System

SYSTEM LOCATION:

Office of the Deputy Chief of Staff, Personnel and Administration, Personnel Branch, Headquarters (HQ) TRADOC Combined Arms Test Activity (TCATA), ATCAT-SPT-AGA, Ft. Hood, TX 76544.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, warrant officers, enlisted personnel, and Department of the Army civilians currently assigned or attached to HQ TCATA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain automated records on individuals to include first and last name, middle initial, social security number; rank or grade and step; control specialty; date of rank; basic pay entry date; component; branch; date assigned to TCATA; flight status; Primary Military Occupational Specialty/ General Schedule Series; organization location by paragraph and line number; office phone; liaison office; marital status; spouse; home phone; present address; city code; legal residence; loss code and date; special qualifications; highest military schooling; latest evaluation date; source of commission; civilian education level and major; background experience; language code; additionally awarded military occupational specialties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 44 U.S.C., Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide Commander, TCATA with the ability to effectively manage personnel resources by furnishing real time information pertaining to individuals' qualifications and status through use of the following rosters: alphabetical qualification, officers by branch, majors and higher, all personnel by grade and birthdate, military occupational specialty, military personnel by the city in which they live, slotting and departing personnel; organizational directory, and telephone directory of GS-7's and above. Data provides bases for reports generated on an "as required" basis in response to specific management queries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disk.

RETRIEVABILITY:

SSN and name.

SAFEGUARDS:

Automated media protected by authorized password system for access terminals, controlled access to operation rooms, and restricted output distribution.

RETENTION AND DISPOSAL:

Records destroyed upon departure of person.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Branch, ATCAT-SPT-AGA, Headquarters TRADOC Combined Arms Test Activity, Ft. Hood, TX 76544.

NOTIFICATION PROCEDURE:

Information may be obtained from the SYSMANAGER.

RECORD ACCESS PROCEDURES:

Information may be obtained from the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Individual interviewed, Military Personnel Records, Employee Record Cards, TDY Orders and TDY Vouchers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0710.10DAAG

SYSTEM NAME:

710.10 Reserve Personnel Information Reporting System.

SYSTEM LOCATION:

Decentralized Segments: Commander, First United States Army, Ft. George G. Meade, MD 20755; Commander, Fifth United States Army, Ft. Houston, TX 78234; Commander, Sixth United States Army, Presidio of San Francisco, CA 94129; Commander, United States Army Western Command (WESTCOM), Ft. Shafter, HI 96858; Commander, 172d Infantry Brigade, Alaska, Ft. Richardson, AK 99505; Chief, United States Army Reserve (USAR) Affairs, Europe, APO New York 09245. Each Army Headquarters (HQ) maintains the records pertaining to its geographical area.

Centralized User: Systems Support Directorate, United States Army Reserve Components Personnel and Administration Center (RCPAC), 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals currently assigned to a USAR unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains identification data, including name, social security number

(SSN); current assignment data, including unit identification code, grade, and occupational specialty; retirement data, including number of retirement points and years of satisfactory military service; and other selected data which serve in the administration and reporting of the individual, including security clearance, date entered military service, date of last promotion, date military obligation expires, sex, race, and civilian occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 275.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

File is maintained at each Army Command HQ for the administration of USAR unit personnel. Administration includes control of promotions, transfers, and other day-to-day actions in addition to maintaining unit readiness which includes identifying training needs and assuring that needs are filled on a continuing basis.

A copy of each Army file is sent to RCPAC on a monthly basis for reporting purposes. Statistical reports are prepared at RCPAC for use by various Department of the Army (DA) and Department of Defense Staff agencies. The main users of this report are: Office of Chief, Army Reserve; HQ United States Army Forces Command; HQ Continental United States (CONUS) Armies; Office of the Chief of Chaplains; and Office of the Deputy Chief of Staff for Personnel (DCSPER). Uses include: strength accounting, budgeting, readiness in case of mobilization of reserve units, and forecasting of future needs based upon expected attrition. In addition, the Command Involvement Program (CIP) computer system inspects the personal data contained in each record and reports percentage of accuracy and completeness to the unit commander and his/her superiors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File is stored on computer magnetic tapes in air-conditioned libraries.

RETRIEVABILITY:

File is sequenced by SSN within unit identification code. To retrieve an individual's record, an authorized requester must enter SSN, five characters of last name, unit identification code, military personnel class (indicates individual is an officer, warrant officer, or enlisted), and a particular code identifying the transaction as a record request.

SAFEGUARDS:

Tape files are stored on tape racks in reel number sequence in a restricted library within the computer room complex which is a restricted area. In addition, the building housing the computer room is restricted to authorized personnel.

RETENTION AND DISPOSAL:

A record is retained for the duration of the reservist's unit assignment.

CONUS: The current tape file and the two previous tape files are retained at any given time.

OVERSEAS: Record files are retained for historical data reporting as follows: 4 years for reports for months of March, June, and December; 6 years for the report month of September; and 2 years for all other report months.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

To ascertain if the tape file contains data on a particular individual, the individual should write or visit the Headquarters of the Continental United States Army area in which his/her unit is located.

RECORD ACCESS PROCEDURES:

To request access to the information contained on this tape file, the individual should write or visit the Headquarters of the Continental United States Army in which his/her unit is located.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER, ATTN: DAPE-PBP.

RECORD SOURCE CATEGORIES:

Data are extracted from the following sources: Correspondence from Reservist; *National ZIP Code Directory;* DA Form 1383, Statement of Retirement Points; Release From Active Duty Orders; DA Form 873, Certificate of Clearance and/or Security Determination; DA Form 1379, USAR Unit Record of Reserve Training; Promotion Orders; Assignment Orders; Language Proficiency Questionnaire; DA Form 268, Report for Suspension of Favorable Personnel Actions; DA Form 67-7, US Army Officer Efficiency Report; DA Form 1506, Statement of Service; National Guard Bureau Form 23, Retirement Credits Record; Department of Defense (DD) Form 4, Enlistment Contract Armed Forces of the US; DD Form 47, Record of Induction; DA Form 61, Application for Appointment; DA Form 2, 2-1, Qualification Record; DA Form 3725, Army Reserve Status and Address Verification Questionnaire; *Dictionary of Occupational Titles;* DA Form 3726, 3726-1, Ready Reserve Service Agreement; DD Form 214, Armed Forces of the US Report of Transfer or Discharge; Standard Form 88, Report of Medical Examination.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0807.01DAAG

SYSTEM NAME:

807.01 MCT USAR Technician System

SYSTEM LOCATION:

Primary System: System Support Directorate, United States Army Reserve Components Personnel and Administration Center (RCPAC) (Field Operating Agency of The Adjutant General's Office, Department of the Army (DA)), 9700 Page Boulevard, St. Louis, MO 63132.

Decentralized Segments: Deputy Chief of Staff for Personnel (DCSPER) and DA Staff agencies and commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is currently employed as a United States Army Reserve (USAR) Technician.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personnel identification data to include name and social security number (SSN) and work status data concerning job category, grade, assigned work station and location. If personnel are members of the USAR, data on reserve assignment and reserve grade are also carried.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 275.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RCPAC: Receive raw input data from USAR Commands, maintain the centralized data processing system and produces and distributes reports to the users. Is the computer processing agency; does not utilize or dispense data to other that officially designated agencies.

USAR Commands: To obtain current management data to administer to technicians assigned within their command.

DCSPER: To monitor and provide policy guidance and budget planning for the program.

Other DA Staff agencies and commands: To provide data for inclusion in training and mobilization plans.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored as computer tape and paper printout.

RETRIEVABILITY:

Sequenced numerically by SSN.

SAFEGUARDS:

Security guards limit access to the RCPAC. Magnetic tape files are maintained in a library by reel numbers; access to a specific file must be determined by responsible scheduling personnel. In addition, basic file characteristics must be programmed into access programs before individual data records can be referenced.

Access to hard copy listings is limited to employed personnel with a job related need-to-know requirement at the DCSPER, USAR Commands, and other DA Staff agencies and commands.

RETENTION AND DISPOSAL:

The automatic data processing system at the RCPAC requires records to be maintained on an evolutionary schedule, a record is created upon hiring and is eliminated when employment is terminated. Tape files are retained for 60 days; tape files are retained in a tape library through three processing cycles, a creation cycle, for use as the current file in the next creation cycle and then as the emergency back-up file.

Printed reports/listings are maintained at the DCSPER, USAR Commands, and other DA Staff agencies and commands until superseded by the next edition.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel (DAPE-MPO), Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from: Deputy Chief of Staff for Personnel (DAPE-MPO), Room 2B-718, The Pentagon, Washington, DC 20310; telephone: Area Code 202/695-3837.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Headquarters, Department of the Army, Deputy Chief of Staff for Personnel, ATTN: DAPE-MPO, Washington, DC 20310.

Requests should contain the full name and SSN of the individual; current address and telephone number; and a clear, concise request statement.

Personal visits are limited to the USAR Command having jurisdiction over the unit by whom the technician is employed. Acceptable identifying documents, such as driver's license, Reserve identification card, or other document that can be verified against record, are required.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from the SYSMANAGER, ATTN: DAPE-MPO.

RECORD SOURCE CATEGORIES:

Data coded on DA Forms 3615-R, Strength and Utilization of USAR Technicians, are transmitted by DA Form 200 from the employing USAR command to RCPAC via the United States Postal Service. Processed data are returned to authorized agencies by reports.

[FR Doc. 80-2[illegible]9 Filed 7-10-80; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Science and Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on August 19-20, 1980, from 8 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions which contrast the results of recent intelligence studies of Soviet naval technology with U.S. progress in similar technologies. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone no. (703) 756-1205.

Dated: July 7, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80-2[illegible] Filed 7-10-80; 8:45 am]

BILLING CODE 3810-71-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Strategic Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on July 28-29, 1980, from 8:00 a.m. to 5:00 p.m. each day, at the Naval Postgraduate School, Monterey, California. All sessions will be closed to the public.

The entire agenda for the meeting will consist of briefings and discussions on the nature of collective security in the Pacific, centering around the most sensitive intelligence information available on the military and political situation in the area. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone no. (703) 756-1205.

Dated: July 7, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80-2[illegible] Filed 7-10-80; 8:45 am]

BILLING CODE 3810-71-M

Naval Research Advisory Committee; Meeting; Correction

The heading appearing over the notice of meeting of the Naval Research Advisory Committee, published in the Federal Register June 30, 1980, 45 FR 43842, erroneously described that meeting as "Partially Closed." In fact, as was clear from the text of that notice, the meeting of the Naval Research Advisory Committee, to be held July 14–18 and 21–25, 1980, will be entirely closed to the public.

Dated: July 3, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80-20792 Filed 7-10-80; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Defense Science Board Review Panel on ASW; Advisory Committee Meeting

An ASW Review Panel under the Defense Science Board will meet in closed session on August 8, 1980 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The ASW Review Panel will review the technical aspects of ASW programs in the 8 August meeting.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

July 3, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-20681 Filed 7-10-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Community Education Advisory Council Meeting

AGENCY: Department of Education, Community Education Advisory Council.

ACTION: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under 5 U.S.C. Appendix I of the Federal Advisory Committee Act, Pub. L. 92–463. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: July 28, and 29, 1980.

ADDRESS: Bahia Hotel, 998 West Mission Drive, San Diego, California 92101.

FOR FURTHER INFORMATION CONTACT: Margaret Beavan, Department of Education, 7th and D Streets, S.W., Regional Office Building Three, Room 5622, Washington, D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Pub. L. 95–561. The Council is established to advise the Commissioner of Education on policy matters relating to the interest of community schools.

All sessions of this meeting are open to the public. The meeting will begin at 9:00 a.m. on Monday, July 28, 1980, and end at 4:00 p.m. On July 29, 1980, the meeting will begin at 9:00 a.m. and end at 3:00 p.m.

At the last meeting held in Washington, D.C. on April 21, and 22, 1980, the Council reviewed the proceedings from the National Forum on School-Community-Home Relationships; discussed possible policy recommendations concerning an effective and appropriate Federal role relative to the relationship of school-community-home; interacted with other Federal Advisory Council representatives; and conducted an orientation for newly appointed Council members.

At the request of the full Council, the Planning Committee met in Annapolis, Maryland on June 4, and 5, 1980, to prepare materials for this upcoming meeting. Proposed agenda items for this meeting include:

(1) Presentation, followed by discussion and review, of Council's revised management plan;

(2) Discussion of on-going initiatives, including inter-intra agency and state advisory council collaboration;

(3) Review of concept paper on the School-Community-Home National Forum recommendations; and,

(4) Discussion of other administrative matters and related business.

Records shall be kept of all Council proceedings and shall be available for public inspection in Regional Office Building Three, Room 5622, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on July 3, 1980.

Ron Castaldi,

Acting Director, Community Education Program.

[FR Doc. 80-20913 Filed 7-10-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination To Establish Dose Assessment Advisory Group

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that the establishment of a Dose Assessment Advisory Group (DAAG as hereinafter identified) is in the public interest in connection with the performance of duties imposed upon the Department of Energy (DOE) by the DOE Organization Act (Pub. L. 95–91) and other applicable law. This determination follows consultation with the General Services Administration, pursuant to Section 9(a)(2) of the Federal Advisory Committee Act and Section 6(a) of OMB Circular No. A–63 (Revised).

1. *Name of Advisory Committee*—Dose Assessment Advisory Group (DAAG).

2. *Purpose*—The DAAG will provide the Department of Energy with independent advice and recommendations concerning the assessment of integrated radiation dosages from the deposition of radioactive fallout in areas outside of the Nevada Test Site (NTS). The Department's Offsite Radiation Exposure Review project includes several task groups which will be responsible for (a) data collection and library, (b) fallout vertification, (c) pathway analysis, (d) external dose, (e) internal dose, and (f) data analysis (statistics/modeling). The DAAG will review plans, organization, and technical direction and coordination for this project and will provide comments and advice on task group activities and reports. The DAAG will provide a continuing overview of the entire project and will itself provide written interim reports of its findings and conclusions. Thus, the Department of Energy will be provided an effective and credible means by which the functions of a number of working task groups can be monitored, reviewed, and evaluated as the project develops to permit appropriate guidance as necessary. The DAAG will review task group proposals and, through the review and comment process, assist in guiding the development of each task, subtask, or task group activity. The DAAG also will review and comment on the products

from such groups. The DAAG, by utilizing the talents and expertise of its members, will render advice to DOE by reports to both the Secretary of Energy, through the Assistant Secretary for Environment, and to the Manager, Nevada Operations Office (NV), concerning the various radiation exposure research tasks, the appropriate direction and goals, and related research programs of benefit to the radiation exposure issue.

3. *Effective Date of Establishment and Duration*—The DAAG is established, effective upon publication of this notice and filing of the charter with the standing committees of Congress having legislative jurisdiction over the DOE, and will be terminated or renewed not later than two years from the date the charter is filed as required by the Federal Advisory Committee Act. Pursuant to section 6(a) of OMB Circular A–63 (Revised), the Committee Management Secretariat, General Services Administration, has granted a waiver of the 15-day waiting period between publication of this notice and the filing of the charter with the Congress.

4. *Membership*—Membership and representation of all interests will be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463) and Section 624(b) of the DOE Organization Act (Pub. L. 95–91). Membership will include reasonable representation of the various areas of expertise and will permit, as appropriate, representation from state governmental agencies and from other public and private sources. The members will include those selected on the basis of their preeminence in the fields of radiological sciences and technologies, including epidemiology; their professional expertise in relevant fields; their insight into the relationship between the various disciplines; and their working experience. Selection of members will reflect the principal focus on the radiation fallout problem allegedly associated with radioactive fallout from the nuclear atmospheric weapons testing programs from 1951 through 1962.

Membership of the DAAG will be limited to approximately 20 members, including representatives from the State governments of Arizona, California, Nevada, and Utah. Other states where citizens may claim to have suffered injury or loss from radioactive fallout from nuclear testing may be invited to provide a representative to the DAAG.

There will be no discrimination based on race, color, national origin, religion, sex, age, or handicap.

5. *Operation*—The DAAG will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), OMB Circular A–63 (Revised), Section 624 of the DOE Organization Act (Pub. L. 95–91), and other directives and instructions issued in accordance with the implementation of these acts. The DAAG will normally meet four times a year and at such other times as may be necessary.

An agenda will be determined by the Chairperson in consultation with the Executive Secretary and the Project Manager, Offsite Radiation Exposure Review project, giving due consideration to the suggestions of the DAAG members. Staff support will be provided to the DAAG by the Offsite Radiation Exposure Review project office of the Nevada Operations Office.

6. *Objectivity*—The advice and recommendations of the DAAG will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the DAAG's independent judgment.

Issued in Washington, D.C. July 8, 1980.

Charles W. Duncan, Jr.,

Secretary of Energy.

[FR Doc. 80-20770 Filed 7-10-80 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Kansas-Nebraska Natural Gas Company, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

COMMENTS BY: August 11, 1980.

ADDRESS: Send comments to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816) 374–5932.

SUPPLEMENTARY INFORMATION: On June 26, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Kansas-Nebraska Natural Gas Company, Inc. (KNNG). Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

KNNG, with its home office located in Lakewood, Colorado, is engaged in the processing and sale of natural gas liquids (NGL) and NGL Products, and is subject to the Mandatory Petroleum and Allocation and Price Regulations at 10 CFR, Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of KNNG, the ERA Office of Enforcement and KNNG entered into a Consent Order, the significant terms of which are as follows:

1. The Office of Enforcement has examined KNNG's books and records and reviewed all pertinent matters relating to KNNG's compliance with the DOE petroleum price regulations in effect during the period from September 1, 1973 through December 31, 1979. All matters pertaining to compliance with the DOE petroleum price regulations and prices charged by KNNG in sales of NGL and NGL Products during the period September 1, 1973 through December 31, 1979 are resolved by this Consent Order.

2. KNNG will refund $14,500,000.00, which includes interest through the date on which the Consent Order becomes effective, as specified in the Consent Order.

3. Execution of the Consent Order constitutes neither an admission by KNNG nor a finding by DOE that KNNG has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration or the Department of Energy.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, KNNG agrees to refund, in full settlement of any civil

liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $14,500,000.00 within 36 months from when the Consent Order becomes effective. Refunded overcharges will be distributed as follows:

(a) KNNG has previously refunded to purchasers of its NGL and NGL Products $1,598,581.47.

(b) With respect to its sales of propane and the propane content of NGL, KNNG agrees to implement prospective price rollbacks in the total amount of $7,761,383.05, plus interest. The implementation of the price rollback shall be subject to prior approval by the District Manager of the ERA, Central Enforcement District of a plan or plans submitted by KNNG. To the extent that the District Manager finds a plan submitted by KNNG to be unacceptable, he may in his sole discretion either (1) propose modification of such plan or (2) direct KNNG to effect the refund with respect to which such plan was submitted by means of installment cash payments to the DOE, instead of by means of a price rollback. Such a plan will not be acceptable unless it ensures that the full amount of refund will be passed through to end-users of the product concerned, without the issuance of any further orders by the DOE.

(c) With respect to its sales of butane, natural gasoline, and the butane and natural gasoline content of NGL, KNNG agrees to refund the sum of $5,140,035.46, plus interest, in the form of checks made payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, overcharges may have been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification to the ERA at this time. Proof of claims is now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should submit your comment or written notification of a claim within 30 days after publication of this notice to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, ERA Central Enforcement District, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on KNNG Consent Order." We will consider all comments we receive within 30 days after the publication of this notice.

Issued in *Kansas City, Missouri* on the *27th* day of *June*, 1980.

William D. Miller,

District Manager, Central Enforcement District Economic Regulatory Administration.

[FR Doc. 80-20674 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-01-M

Taylor Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Taylor Oil Company, 3600 So. Minnesota Ave., Sioux Falls, South Dakota 57105. This Proposed Remedial Order charges Taylor Oil Company with pricing violations in the amount of $147,055.43, connected with the resale of residual fuel during the time period November 1, 1973 through April 30, 1975, in the State of South Dakota.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Kenneth E. Merica, District Manager of Enforcement, 1075 South Yukon, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226, phone (303) 234—3195. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Lakewood, Colorado on the 26th day of June 1980.

Kenneth E. Merica,

District Manager of Enforcement Rocky Mountain District.

[FR Doc. 80-20675 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-01-M

Refiners Crude Oil Allocation Program; Second Supplemental Notice for Allocation Period of April 1, 1980, through September 30, 1980, and Notice of Issuance of Emergency Allocations for June and July 1980

The notice specified in 10 CFR 211.65(g) of the refiners crude oil allocation (buy/sell) program for the allocation period of April 1, 1980, through September 30, 1980, was issued March 21, 1980 (45 FR 21010, March 31, 1980). Subsequent to the publication of that notice, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) assigned emergency allocations pursuant to 10 CFR 211.65(c)(2) to one small refiner and issued a spplemental buy/sell list on May 13, 1980 (45 FR 32755, May 19, 1980). The ERA hereby issues a second supplemental buy/sell list for the allocation period of April 1, 1980, through September 30, 1980. The list (1) sets forth one new emergency allocation for the months of June and July 1980, assigned pursuant to 10 CFR 211.65(c)(2), as amended on April 27, 1979 (44 FR 26060, May 4, 1979); (2) sets forth an emergency allocation directed by the Office of Hearings and Appeals; and (3) revises the regular buy/sell list for the April–September 1980 allocation period originally issued on March 21, 1980 (45 FR 21010, March 31, 1980).

The second supplemental buy/sell list for the allocation period April 1, 1980, through September 30, 1980, is set forth as an appendix to this notice. The list includes the name of the small refiner granted emergency allocations for the months of June and July 1980, and its eligible refinery; the quantity of crude

oil the refiner is eligible to purchase; the fixed percentage share for each refiner-seller; and the additional sales obligation of each refiner-seller, which reflects each refiner-seller's sales obligation for the emergency allocations listed herein.

The allocations for the small refiner on the supplemental buy/sell list were determined in accordance with 10 CFR 211.65(c)(2). Sales obligations for refiner-sellers were determined in accordance with 10 CFR 211.65(e) and (f).

The buy/sell list covers PAD Districts I through V, and amounts shown are in barrels of 42 gallons each, for the specified period. Pursuant to 10 CFR 211.65(f), each refiner-seller shall offer for sale during an allocation period, directly or through exchanges to refiner-buyers, a quantity of crude oil equal to that refiner-seller's sales obligation plus any volume that the ERA directs the refiner-seller to sell pursuant to 10 CFR 211.65(j).

Pursuant to 10 CFR 211.65(h), each refiner-buyer and refiner-seller is required to report to ERA in writing or by telegram the details of each transaction under the buy/sell list within forth-eight hours of the completion of arrangements therefor. Each report must identify the refiner-seller, the refiner-buyer, the refineries to which the crude oil is to be delivered, the volumes of crude oil sold or purchased, and the period over which the delivery is expected to take place.

The procedures of 10 CFR 211.65(j) provide that if a sale is not agreed upon subsequent to the date of publication of this notice, a refiner-buyer that has not been able to negotiate a contract to purchase crude oil may request that the ERA direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner-buyer. Such request must be received by the ERA no later than 20 days after the publication date of this supplemental buy/sell notice. Upon such request, the ERA may direct one or more refiner-sellers that have not completed their required sales to sell crude oil to the refiner-buyer.

In directing refiner-sellers to make such sales, ERA will consider the percentage of each refiner-seller's sales obligation for the allocation period that has been sold as reported pursuant to § 211.65(h), as well as the refiner-seller or sellers that can best be expected to consummate a particular directed sale. If, in ERA's opinion, a valid directed sale request cannot reasonably be expected to be consummated by a refiner-seller that has not completed all or substantially all of its sales obligation for the allocation period, the ERA may issue one or more directed sales orders that would result in one or more refiner-sellers selling more than their published sales obligations for that allocation period. In such cases, the refiner-seller or sellers will receive a barrel-for-barrel reduction in their sales obligations for the next allocation period pursuant to 10 CFR 211.65(f)(3)(ii).

If the refiner-buyer declines to purchase the crude oil specified by ERA, the rights of that refiner-buyer to purchase that volume of crude oil are forfeited during this allocation period, provided that the refiner-seller or refiner-sellers have fully complied with the provision of 10 CFR 211.65.

Refiner-buyers making requests for directed sales must document their inability to purchase crude oil from refiner-sellers by supplying the following information to ERA:

(i) Name of the refiner-buyer and of the person authorized to act for the refiner-buyer in buy/sell program transactions.

(ii) Name and location of the refineries for which crude oil has been sought, the amount of crude oil sought for each refinery, and the technical specifications of crude oils that have historically been processed in each refinery.

(iii) Statement of any restrictions, limitations, or constraints on the refiner-buyer's purchases of crude oil, particularly concerning the manner or time of deliveries.

(iv) Names and locations of all refiner-sellers from which crude oil has been sought under the buy/sell notice, the refineries for which crude oil has been sought, and the volume and specifications of the crude oil sought from each refiner-seller.

(v) The response of each refiner-seller to which a request to purchase crude oil has been made, and the name and telephone number of the individual contacted at each such refiner-seller.

(vi) Such other pertinent information as ERA may request.

Note the change of address. All reports and applications made under this notice should be addressed to: Chief, Crude Oil Allocation Branch, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461.

TWX's may be sent to 710-822-9451 (answerback EVFTJ WSH).

Also note that the phone number for the Crude Oil Allocation Branch has been changed to 202-653-3459.

Section 211.65(c)(2)(ii), as amended on March 27, 1980, (45 FR 21196), March 31, 1980), states in part that applications for emergency allocations "must be submitted by the first day of the month prior to the month(s) for which an allocation is sought but not before the 20th day of the second month prior to the month(s) for which an allocation is sought." This provision is intended to permit ERA to process applications and issue emergency allocations in a timely fashion.

Section 211.65(c)(2)(ii)(B), as amended, requires all applicants for emergency allocations to serve copies of their applications on refiner-sellers. Comments regarding an application will be accepted if received within eight days of receipt of the application. Applicants are required to mail copies of their application (and any amendments thereto) to refiner-sellers on the same date the application is mailed or delivered to ERA. Refiner-sellers must mail their comments on the applications to the Crude Oil Allocation Branch within eight days of the refiner-sellers' receipt of the application. The name and address of the contact for each refiner-seller is included in the appendix to this notice.

As has been stated in previous notices, if an applicant claims confidentiality for any of the information contained in its application, *the basis for the claim must be clearly stated.* ERA does not consider the names of potential suppliers contacted in unsuccessful attempts to obtain crude oil or offers of crude oil that the applicant has rejected to be proprietary.

Finally, ERA emphasizes that an application for an emergency allocation *must contain a detailed statement* as to why the applicant believes it has exhausted *all* supply possibilities, as required in Section 211.65(c)(2)(ii)(D)(7). *Applications which fail to make this statement will be dismissed with prejudice.*

Copies of the decisions and orders assigning the emergency allocations listed herein may be obtained from: Economic Regulatory Administration, Public Information Office, 2000 M Street, N.W., Rm. B110, Washington, D.C. 20461, (202) 634-2170.

This notice is issued pursuant to Subpart G of DOE's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before August 11, 1980.

Issued in Washington, D.C. on July 7, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Appendix

The Buy/Sell list for the period April 1, 1980, through September 30, 1980, is hereby amended to reflect new emergency allocations to a single small refiner pursuant to 10 CFR 211.65(c)(2), an emergency allocation made purusant to a recent decision of the Office of Hearings and Appeals, and corrections to the regular Buy/Sell list issued on March 21, 1980 (45 FR 21010, March 31, 1980). The amended list sets forth the volume of crude oil that each such refiner-seller is required to offer for sale to small refiners.

All refiner-sellers' percentage shares have been changed to reflect the Continental Oil Company and Exxon Company, U.S.A. Decision and Order dated March 20, 1979 (Case numbers FEX-0185 and FEX-0184). While the refiner-sellers' percentage shares displayed are rounded to three decimal places, six decimal places have been utilized to establish actual sales obligations.

Also included in the appendix is a list of the names and addresses of the persons designated by refiner-sellers to receive service of copies of applications for emergency crude oil allocations.

Crude Oil Allocation (Buy/Sell) Program Revised Sales Obligations, April 1, 1980—September 30, 1980

The following list corrects the regular Buy/Sell list for the period April–September 1980, which was issued on March 21, 1980 (45 FR 21010, March 31, 1980). It does not include the additional allocations issued as part of the first supplemental Buy/Sell list on May 13, 1980 (45 FR 32755, May 19, 1980).

The list credits refiner-sellers with sales under the program that were not correctly incorporated in the previous list, either because of inaccurate reporting or computational errors.

Refiner-seller	Share	Sales obligation
Amoco Oil Co.	.105	2,584,452
Atlantic Richfield Co.	.077	3,031,424
Chevron U.S.A., Inc.	.101	1,937,611
Cities Service Co.	.025	1,316,701
Continental Oil Co.	.004	156,755
Exxon Co., U.S.A.	.089	2,215,950
Getty Refining & Marketing Co.	.021	506,190
Gulf Refining & Marketing Co.	.091	2,751,134
Marathon Oil Co.	.022	541,239
Mobil Oil Corp.	.094	2,206,379
Phillips Petroleum Co.	.041	1,099,028
Shell Oil Co.	.113	3,524,504
Sun Co.	.055	1,769,583
Texaco Inc.	.114	2,574,839
Union Oil Co. of California	.046	2,338,199
Total sales obligations		28,553,988

Crude Oil Allocation (Buy/Sell) Program Revised Sales Obligations, April 1, 1980—September 30, 1980

The following list sets forth refiner-sellers' sales obligations for the April 1—September 30, 1980 period as revised by the list set forth above, the additional sales obligations of 223,147 barrels reflected in the supplemental Buy/Sell list issued on May 13, 1980 (45 FR 32755, May 19, 1980), and the additional sales obligations resulting from the new allocations listed in this notice.

Refiner-seller	Additional sales obligations (Bbls)	Total sales obligations (Bbls)
Amoco Oil Co.	439,317	3,047,142
Atlantic Richfield Co.	322,611	3,371,199
Chevron U.S.A., Inc.	425,996	2,386,271
Cities Service Co.	103,171	1,425,361
Continental Oil Co.	16,777	174,425
Exxon Co., U.S.A.	373,290	2,609,100
Getty Refining & Marketing Co.	88,981	599,905
Gulf Refining & Marketing Co.	382,149	3,153,614
Marathon Oil Co.	95,860	642,199
Mobil Oil Corp.	394,614	2,621,988
Phillips Petroleum Co.	173,538	1,281,799
Shell Oil Co.	476,545	4,026,402
Sun Co.	232,770	2,014,737
Texaco Inc.	476,935	3,077,148
Union Oil Co. of California	191,720	2,540,119
Total sales obligations	4,194,274	32,971,409

Office of Hearings and Appeals Decision

On June 20, 1980, the Office of Hearings and Appeals (OHA) issued a Proposed Decision and Order that reached the preliminary conclusion that Dow Chemical U.S.A. (Dow) should be granted exception relief for its newly constructed refinery in Freeport, Texas (Oyster Creek) (Case Number BEE-0285). On the same day, OHA also issued an Interim Decision and Order granting immediate exception relief to Dow by directing the Economic Regulatory Admininstration to grant Dow's Oyster Creek refinery an emergency buy/sell allocation of crude oil of 33,979 barrels/day for the period June 1–November 30, 1980 (Case Number BEN-0285).

This allocation notice issues Dow's allocation for the period June 1–September 30, 1980. Dow's allocation for the period October 1–November 30, 1980, will be issued as part of the regular notice for the October 1, 1980, through March 31, 1981, allocation period.

Refiner-sellers are advised that OHA's Interim Decision and Order specifically restricts Dow from purchasing more than 8,495 barrels/day of crude oil from any single refiner-seller.

New Emergency Buy/Sell Allocation

On June 17, 1980, ERA issued a Decision and Order to Western Refining Co., granting Western's Woods Cross, Utah, refinery emergency allocations of crude oil of 15,480 barrels for June 1980 and 33,356 barrels for July 1980.

Additional Allocations and Adjustments for the April 1, 1980–September 30, 1980, Allocation Period

Refiner-Buyer	Refinery	Volume (barrels)
Dow Chemical U.S.A.	Oyster Creek, Tx.	4,145,438
Western Refining Co.	Woods Cross, Ut.	48,836
Total		4,194,274

Contact List for Refiner-Sellers

Matthew J. Gallo, Esq., Amoco Oil Co., 200 E. Randolph Drive, P.O. Box 5910–A, Chicago, Ill. 60680.

J. J. Hur, Atlantic Richfield Co., 515 South Flower St., P.O. Box 2679 TA, Los Angeles, CA 90071.

Frank W. Bradley, Chevron U.S.A., Inc., 1700 K. Street, N.W., Suite 1204, Washington, D.C. 20006.

W. C. McCollough, Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102.

Mike McNeese, Conoco, P.O. Box 2197, Houston, Tx. 77001.

Barbara Finney, Exxon, U.S.A., P.O. Box 2180, Houston, TX 77001.

Eugene F. Gervino, Esq., Getty Refining & Marketing Co., P.O. Box 1650, Tulsa, OK. 74102.

L. G. Armel, Gulf Oil Corp., Gulf Bldg., P.O. Box 2001, Houston, TX 77001.

Victor Beghini, Vice President, Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.

W. L. Fanning, Jr., Mobil Oil Corp., 150 East 42nd St., New York, N.Y. 10017.

A. L. Hobbs, Phillips Petroleum Co., Phillips Bldg., Bartlesville, OK 74004.

G. E. Carnahan, Shell Oil Co., P.O. Box 2463, Houston, TX 77001.

C. Steven LeBaron, Esq., Sun Petroleum Products Company, 9th Floor, Law Department, 1608 Walnut St., Philadelphia, Pa. 19103.

Paul D. McNaughton, Texaco, Inc., P.O. Box 52332, Houston, TX 77052.

Howard Johnson, Texaco, Inc., c/o Legal Department, 2000 Westchester Ave., White Plains, N.Y. 10650.

Gus Williams, Union Oil Company of Calif., 1650 East Golf Road, Schaumburg, Ill. 60196.

[FR Doc. 80-20709 Filed 7-10-80; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Vol. 232]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

July 3, 1980.

The Federal Energy Regulatory Commission received notices of determination from the jurisdictional agencies listed herein, for the indicated wells, pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a (D) in the DEN column. Estimated annual production is in million cubic feet (MMcf).

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.W., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission by July 28, 1980.

Please reference the FERC Control Number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
KENTUCKY DEPARTMENT OF MINES & MINERALS							
ABLE ENERGY COMPANY					RECEIVED: 06/16/80 JA: KY		
8040595	501366	1614930935	102		A G ELLIS ESTATE NO 1	0.0	
8040593	501364	1610728079	102		RUPERT ABBOTT #1	100.0	ORBIT GAS CO
ANTARES OIL CORPORATION					RECEIVED: 06/16/80 JA: KY		
8040594	501365	1610732502	102		GLADYS HATLEY #1	182.0	TEXAS GAS TRANSMISSION CORP
CONTROLLED RESOURCES OIL & GAS CORP					RECEIVED: 06/16/80 JA: KY		
8040590	501361	1619500000	103		DEWEY ELKINS HEIRS #34630	45.0	COLUMBIA GAS TRANSMISSION CORP
HAR-KEN OIL COMPANY					RECEIVED: 06/16/80 JA: KY		
8040587	501358	1617700000	103		JUSTIN POTTER NO 3	2.4	WESTERN KENTUCKY GAS CO
J SCOTT TALBOTT					RECEIVED: 06/16/80 JA: KY		
8040592	501363	1601100000	102		ROSE RUN MINERAL CO T-6	0.0	
JIMMY HAMILTON GAS & OIL					RECEIVED: 06/16/80 JA: KY		
8040596	501367	1601300000	102		T C FITZPATRICK 119	300.0	
8040585	501356	1615900000	103		W J PARKS - NO 122	18.2	COLUMBIA GAS TRANSMISSION CORP
8040586	501355	1615900000	103		W J PARKS NO 126	14.6	COLUMBIA GAS TRANSMISSION CORP
KENTUCKY OHIO GAS COMPANY					RECEIVED: 06/16/80 JA: KY		
8040589	501360	1612700000	108		ERNEST HAYES #2 SERIAL L-7	2.4	INLAND GAS CO
KENTUCKY WEST VA GAS COMPANY					RECEIVED: 06/16/80 JA: KY		
8040588	501359	1613300000	108		MOSES ISON - NO 7215	20.9	KENTUCKY WEST VIRGINIA GAS CO
KENTUCKY WEST VIRGINIA GAS CO					RECEIVED: 06/16/80 JA: KY		
8040568	501339	1613100000	103		FORDSON COAL CO - NO 1656	100.0	KENTUCKY WEST VIRGINIA GAS CO
8040570	501341	1613100000	103		FORDSON COAL CO NO 1666	7.1	KENTUCKY WEST VIRGINIA GAS CO
8040565	501336	1611900000	103		G T CURRY - WELL NO 1652	37.9	KENTUCKY WEST VIRGINIA GAS CO
8040566	501337	1611900000	103		GOODLOE BROTHERS CO INC - NO 1646	26.0	KENTUCKY WEST VIRGINIA GAS CO
8040567	501338	1611900000	103		GOODLOE BROTHERS CO INC - NO 1651	22.0	KENTUCKY WEST VIRGINIA GAS CO
8040569	501340	1611900000	103		GOODLOE BROTHERS CO INC - NO 1660	20.0	KENTUCKY WEST VIRGINIA GAS CO
8040572	501343	1619500000	103		H G CHARLES - NO 7255	21.9	KENTUCKY WEST VIRGINIA GAS CO
8040573	501344	1619500000	103		H G CHARLES - NO 7258	58.4	KENTUCKY WEST VIRGINIA GAS CO
8040571	501342	1611900000	103		KYCOGA LAND CO - NO 1672	21.9	KENTUCKY WEST VIRGINIA GAS CO
8040581	501352	1611900000	103		1648 - GRACE CARTER	16.4	KENTUCKY WEST VIRGINIA GAS CO
8040582	501353	1611900000	103		1650 - GRACE CARTER	24.7	KENTUCKY WEST VIRGINIA GAS CO
8040563	501334	1611900000	103		1673 - NANCY ASHLEY & W R SMITH	29.5	KENTUCKY WEST VIRGINIA GAS CO
8040564	501335	1619500000	103		7252 - JOHN W GOFF	8.7	KENTUCKY WEST VIRGINIA GAS CO
8040583	501354	1619500000	103		7253 - NONA C BOWLES	88.0	KENTUCKY WEST VIRGINIA GAS CO
NRG CORP					RECEIVED: 06/16/80 JA: KY		

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
8040591	501362	1604700000	102		#1 WALLIS KING	25.0	WESTERN KENTUCKY GAS CO
PLATEAU RESOURCE DEVELOPMENT CORP					RECEIVED: 06/16/80 JA: KY		
8040577	501348	1615900000	103		DON & KATHERINE CLINE NO PR=5	0.0	
8040576	501347	1615900000	103		J E JUDE ET AL WELL NO PR=4	56.5	
8040580	501351	1615900000	103		URAN & RUBY HINKLE NO PR=3	50.0	
8040578	501349	1611900000	103		W C PARRIS NO PR=1	16.0	
8040579	501350	1615900000	103		WALLACE J & OPAL DEMPSEY PR=2	25.0	
TEC CORP					RECEIVED: 06/16/80 JA: KY		
8040574	501345	1610700000	103		TEC CORP = AUSTIN JENNINGS ETAL #1	#273.8	TEXAS GAS TRANSMISSION CORP
8040575	501346	1610700000	103		TEC CORPORATION = FOWLER-BLUE #1	273.8	TEXAS GAS TRANSMISSION CORP
TENJAB OIL & GAS CO					RECEIVED: 06/16/80 JA: KY		
8040599	501372	1605900000	102		#1 GADDIS-SAUER ET AL UNIT	15.0	WESTERN KENTUCKY GAS CO
8040600	501373	1605900000	102		#1 SAUER ESTATE GAS UNIT	15.0	WESTERN KENTUCKY GAS CO
8040601	501374	1605900000	102		#1 STRODE-DAVIESS CO BD OF EDUCATION UNIT	15.0	WESTERN KENTUCKY GAS CO
WEAVER OIL AND GAS CORPORATION					RECEIVED: 06/16/80 JA: KY		
8040598	501369	1601300000	102		WEAVER OLG CORP AMER ASSOC 34-18-1A	300.0	
8040597	501368	1601300000	102		WEAVER OLG CORP AMER ASSOC 34-22-3A	300.0	
WHITELAND PETROLEUM CORP					RECEIVED: 06/16/80 JA: KY		
8040584	501357	1612500000	103		FITCH #1	36.5	COLUMBIA GAS TRANSMISSION CORP

LOUISIANA OFFICE OF CONSERVATION

CENTRAL TRANSMISSION INC C/O ENERGY					RECEIVED: 06/16/80 JA: LA		
8040618	80-1813	1711120750	108		FRANKLIN #1	8.8	IMC EXPLORATION CO
8040607	80-1823	1706720623	108		LEVEQUE HEIRS #2	4.1	IMC EXPLORATION CO
8040608	80-1824	1706720627	108		LEVEQUE HEIRS #3	4.1	IMC EXPLORATION CO
8040609	80-1825	1706720628	108		LEVEQUE HEIRS #4	4.1	IMC EXPLORATION CO
8040619	80-1814	1711120822	108		PEEK ESTATE #3	8.7	IMC EXPLORATION CO
8040620	80-1815	1711120824	108		PEEK ESTATE #4	8.8	IMC EXPLORATION CO
8040602	80-1816	1711120811	108		W W JENNY #2	3.0	IMC EXPLORATION CO
PRIMUS PRODUCTION CO					RECEIVED: 06/16/80 JA: LA		
8040606	80-1790	1706721483	103		GEORGIA PACIFIC C-41	15.4	UNITED GAS PIPE LINE CO
8040605	80-1789	1706721484	103		GEORGIA PACIFIC C-32	16.4	UNITED GAS PIPE LINE CO
8040604	80-1788	1706721485	103		GEORGIA PACIFIC C-35	15.4	UNITED GAS PIPE LINE CO
8040603	80-1787	1706721454	103		GEORGIA PACIFIC D-15	24.6	UNITED GAS PIPELINE CO
8040617	80-1812	1707321164	103		LIEBER NO 5	12.3	UNITED GAS PIPE LINE CO
8040616	80-1811	1711121804	103		PACE NO 1	35.9	UNITED GAS PIPE LINE CO
8040615	80-1810	1711121878	103		PACE NO 2	38.0	UNITED GAS PIPE LINE CO
8040611	80-1806	1706721469	103		SCHOOL BOARD NO 10	25.7	UNITED GAS PIPE LINE CO
8040610	80-1805	1706721470	103		SCHOOL BOARD NO 11	30.8	UNITED GAS PIPE LINE CO
8040614	80-1809	1706721464	103		SCHOOL BOARD NO 7	20.5	UNITED GAS PIPE LINE CO
8040613	80-1808	1706721466	103		SCHOOL BOARD NO 8	24.6	UNITED GAS PIPE LINE CO
8040612	80-1807	1706721468	103		SCHOOL BOARD NO 9	18.5	UNITED GAS PIPE LINE CO

* ADDITIONAL PURCHASERS (SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
TRIDENT OIL AND GAS CORPORATION					RECEIVED: 06/16/80 JA: LA		
8040621	80-733	1712720769	102		LOUISIANA PACIFIC B #6	126.0	UNITED GAS PIPE LINE CO
WESSELY ENERGY CORPORATION					RECEIVED: 06/16/80 JA: LA		
8040622	80-179	1704920114	102		WILLAMETTE #1 165632	500.0	UNITED GAS PIPE LINE CO
MONTANA BOARD OF OIL & GAS CONSERVATION							
DUARD RUSSMILLER					RECEIVED: 06/16/80 JA: MT		
*8040624	5-80-104	2510121717	102		SANDERSON 2-31	61.3	MINERS COULEE GAS GATHER SYSTEM LT
*8040623	5-80-105	2510121780	102		STATE 16-34	52.5	MINERS COULEE GAS GATHER SYSTEM LT
*8040625	5-80-103	2510121620	102		STROOCK 15-29	17.5	MINERS COULEE GAS GATHER SYSTEM LT
*8040626	5-80-102	2510121769	102		STROOCK 3-9	61.3	MINERS COULEE GAS GATHER SYSTEM LT
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS							
MCCLELLAN OIL CORPORATION					RECEIVED: 06/17/80 JA: NM		
8040628		3000560544	102		TOLMAC STATE NO 1 L2464	99.0	TRANSWESTERN PIPELINE CO
SABINE PRODUCTION COMPANY					RECEIVED: 06/17/80 JA: NM		
8040627		3002500000	108		D EIDSON FEE NO 1	73.0	EL PASO NATURAL GAS CO
WAINOCO OIL & GAS COMPANY					RECEIVED: 06/17/80 JA: NM		
8040629		3000500000	102		WHITE RANCH NO 1	292.0	EL PASO NATURAL GAS CO
WEST VIRGINIA DEPARTMENT OF MINES							
ALLEGHENY & WESTERN ENERGY CORP					RECEIVED: 06/16/80 JA: WV		
8040723		4703501473	108		JOHN J PFOST FARM #1	8.0	COLUMBIA GAS TRANSMISSION CORP
8040724		4703501474	108		JOHN J PFOST FARM #2	8.0	COLUMBIA GAS TRANSMISSION CORP
8040718		4703501477	108		JOHN J PFOST FARM #3	8.0	COLUMBIA GAS TRANSMISSION CORP
8040719		4703501478	108		JOHN J PFOST FARM #4	8.0	COLUMBIA GAS TRANSMISSION CORP
8040715		4703501482	108		JOHN J PFOST FARM #7	8.0	COLUMBIA GAS TRANSMISSION CORP
8040716		4703501483	108		JOHN J PFOST FARM #8	8.0	COLUMBIA GAS TRANSMISSION CORP
8040717		4703501484	108		JOHN J PFOST FARM #9	8.0	COLUMBIA GAS TRANSMISSION CORP
ALLEGHENY LAND & MINERAL COMPANY					RECEIVED: 06/16/80 JA: WV		
8040730		4708500262	103		A - 817	0.0	COLUMBIA GAS TRANSMISSION CORP
8040729		4708500282	103		A-845	0.0	COLUMBIA GAS TRANSMISSION CORP
APPALACHIAN EXPLORATION & DEVEL INC					RECEIVED: 06/16/80 JA: WV		
8040630		4701900396	102		A B CONLEY #3	52.0	EQUITABLE GAS CO
8040633		4708100479	103		BEAVER COAL COMPANY A-16	25.0	COLUMBIA GAS TRANSMISSION CORP
8040632		4708100483	103		BEAVER COAL COMPANY A-19	30.0	COLUMBIA GAS TRANSMISSION CORP
8040642		4708100484	103		BEAVER COAL COMPANY A-20	30.0	COLUMBIA GAS TRANSMISSION CORP
8040641		4708100502	103		BEAVER COAL COMPANY A-24	30.0	COLUMBIA GAS TRANSMISSION CORP
8040631		4701900366	102		E DEITZ #1	52.0	EQUITABLE GAS CO
8040635		4701900398	102		N WALKUP #1	52.0	EQUITABLE GAS CO
8040639		4700500836	108		SHONK LAND COMPANY #12	12.5	CONSOLIDATED GAS SUPPLY CORP
8040638		4700500883	108		SHONK LAND COMPANY #21	12.5	CONSOLIDATED GAS SUPPLY CORP

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
8040637		4700500996	108		SHONK LAND COMPANY #24	12.5	CONSOLIDATED GAS SUPPLY CORP
8040758		4700510440	108		SHONK LAND COMPANY #28	2.6	CONSOLIDATED GAS SUPPLY CORP
8040636		4700501042	108		SHONK LAND COMPANY #30	30.0	CONSOLIDATED GAS SUPPLY CORP
8040640		4700500803	108		SHONK LAND COMPANY #7	12.5	CONSOLIDATED GAS SUPPLY CORP
8040634		4701900400	102		THOMAS #1	52.0	EQUITABLE GAS CO
BAKER DEVELOPMENT					RECEIVED: 06/16/80 JA: WV		
8040738		4709500418	108		CARRIE GARNER #1	5.0	EQUITABLE GAS CO
BOWER HALL & WETZEL ATTN OLIN B WET					RECEIVED: 06/16/80 JA: WV		
8040830		4704100441	108		PEARL STALNAKER #1	13.0	CONSOLIDATED GAS SUPPLY CORP
8040720		4704100495	108		S H BAILEY #1	3.7	CONSOLIDATED GAS SUPPLY CORP
8040721		4704100535	108		S H BAILEY #2	3.7	CONSOLIDATED GAS SUPPLY CORP
8040828		4701700658	108		WAYNE F GASKINS #1	1.5	CONSOLIDATED GAS SUPPLY CORP
BOX ENERGY ASSOCIATES LTD					RECEIVED: 06/16/80 JA: WV		
8040782		4708524335	103		EVA NAY ET AL H-780	25.0	CONSOLIDATED GAS SUPPLY CORP
8040784		4708524337	103		EVA NAY ET AL H-781	25.0	CONSOLIDATED GAS SUPPLY CORP
8040783		4708524336	103		EVA NAY ET AL H-782	25.0	CONSOLIDATED GAS SUPPLY CORP
8040781		4708524344	103		EVA NAY ET AL H-783	18.0	CONSOLIDATED GAS SUPPLY CORP
8040684		4708524345	103		EVA NAY ET AL H-784	35.0	CONSOLIDATED GAS SUPPLY CORP
8040683		4708524343	103		EVA NAY ET AL H-785	35.0	CONSOLIDATED GAS SUPPLY CORP
8040685		4708524357	103		KINCAID H-786	18.0	CONSOLIDATED GAS SUPPLY CORP
C M BEECHER					RECEIVED: 06/16/80 JA: WV		
8040734		4708523132	108		F C GRIMM NO 1	6.5	CONSOLIDATED GAS SUPPLY CORP
8040735		4708523150	108		F C GRIMM NO 2	6.8	CONSOLIDATED GAS SUPPLY CORP
8040736		4708523277	108		F C GRIMM NO 3	6.8	CONSOLIDATED GAS SUPPLY CORP
CLAY COUNTY GAS CO					RECEIVED: 06/16/80 JA: WV		
8040789		4701500050	108		A J MORAN WELL #2	0.0	COLUMBIA GAS TRANSMISSION CORP
8040790		4701500064	108		A J MORAN WELL #3	50.0	COLUMBIA GAS TRANSMISSION CORP
8040812		4701500754	108		A J MORAN WELL 1-A	50.0	COLUMBIA GAS TRANSMISSION CORP
8040788		4701500035	108		B F PIERSON NO 1	0.0	COLUMBIA GAS TRANSMISSION CORP
8040791		4701500069	108		C U SUMMERS NO 1	50.0	COLUMBIA GAS TRANSMISSION CORP
8040785		4701500075	108		H H MARKLE NO 2	35.0	COLUMBIA GAS TRANSMISSION CORP
CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 06/16/80 JA: WV		
8040668		4703501598	108		A S STOUT 4037	1.0	GENERAL SYSTEM PURCHASERS
8040711		4703501504	108		B B BRAMER 7757	4.0	GENERAL SYSTEM PURCHASERS
8040714		4703501523	108		B B REYNOLDS 7952	1.0	GENERAL SYSTEM PURCHASERS
8040780		4700100641	108		BADGER COAL CO 11538	0.2	GENERAL SYSTEM PURCHASERS
8040674		4703501338	108		BELLE CUNNINGHAM - 2590	4.0	GENERAL SYSTEM PURCHASERS
8040665		4703501572	108		C L ANDREWS 8076	4.0	GENERAL SYSTEM PURCHASERS
8040706		4703501488	108		CHARITY & JOHNSON 7540	2.0	GENERAL SYSTEM PURCHASERS
8040678		4703501368	108		CHARLES GRAY 3806	4.0	GENERAL SYSTEM PURCHASERS
8040855		4703501465	108		CONSOL COAL CO 7361	1.0	GENERAL SYSTEM PURCHASERS
8040769		4700700608	108		CONSOLIDATION COAL CO 11981	2.0	GENERAL SYSTEM PURCHASERS

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DFN	WELL NAME	PROD	PURCHASER
8040770		4704700643	108		CONSOLIDATION COAL CO 11982	8.0	GENERAL SYSTEM PURCHASERS
8040661		4703301557	108		D L PERINE 8033	1.0	GENERAL SYSTEM PURCHASERS
8040667		4703301587	108		D L REED 8126	5.0	GENERAL SYSTEM PURCHASERS
8040852		4703301459	108		D T MURRISON 7332	5.0	GENERAL SYSTEM PURCHASERS
8040846		4703301425	108		E A STUTLER 4822	4.0	GENERAL SYSTEM PURCHASERS
8040676		4703301357	108		E F ROGERS 2980	2.0	GENERAL SYSTEM PURCHASERS
8040844		4703301331	108		E J HURST 2258	9.0	GENERAL SYSTEM PURCHASERS
8040663		4703301569	108		ENOCH POST 8066	3.0	GENERAL SYSTEM PURCHASERS
8040656		4703301527	108		EVA E HURST 7968	1.0	GENERAL SYSTEM PURCHASERS
8040840		4703301300	108		F G FLOWERS 1378	0.4	GENERAL SYSTEM PURCHASERS
8040675		4703301343	108		F J DRUMMOND 2681	4.0	GENERAL SYSTEM PURCHASERS
8040845		4703301336	108		F M PIGOTT 2537	4.0	GENERAL SYSTEM PURCHASERS
8040677		4703301365	108		F M SHREVES 3292	5.0	GENERAL SYSTEM PURCHASERS
8040669		4703301411	108		F W STUTLER 4366	4.0	GENERAL SYSTEM PURCHASERS
8040848		4703301431	108		G A CUSTER 5027	1.0	GENERAL SYSTEM PURCHASERS
8040771		4704700633	108		G M EVANS 11872	20.0	GENERAL SYSTEM PURCHASERS
8040703		4703301595	108		G T POST 8153	5.0	GENERAL SYSTEM PURCHASERS
8040775		4702102353	108		H WOOFTER 11649	2.0	GENERAL SYSTEM PURCHASERS
8040670		4703301422	108		HENRY H ASH 4785	1.5	GENERAL SYSTEM PURCHASERS
8040680		4703301379	108		J A SWIGER 3568	2.0	GENERAL SYSTEM PURCHASERS
8040777		4700100684	108		J CRUSTON 11874	21.0	GENERAL SYSTEM PURCHASERS
8040776		4702123240	108		J D SMITH 11645	1.0	GENERAL SYSTEM PURCHASERS
8040838		4703301287	108		J F COFFMAN 1174	9.0	GENERAL SYSTEM PURCHASERS
8040841		4703301315	108		J I COFFINDAFFER 1854	5.0	GENERAL SYSTEM PURCHASERS
8040851		4703301452	108		J I STUTLER 7269	3.0	GENERAL SYSTEM PURCHASERS
8040778		4700100677	108		J JOHNSON 11845	18.0	GENERAL SYSTEM PURCHASERS
8040679		4703301377	108		J M THRASH 3551	4.0	GENERAL SYSTEM PURCHASERS
8040662		4703301563	108		J P BURING 8054	3.0	GENERAL SYSTEM PURCHASERS
8040774		4703300712	108		J W MCKINLEY 11542	9.0	GENERAL SYSTEM PURCHASERS
8040671		4703301424	108		JACKSON ARNOLD-4803	3.0	GENERAL SYSTEM PURCHASERS
8040853		4703301460	108		JACKSON HEIRS 7333	0.4	GENERAL SYSTEM PURCHASERS
8040659		4703301553	108		JACOB MCCUNKEY 8034	3.0	GENERAL SYSTEM PURCHASERS
8040681		4703301581	108		JESSE ASHCRAFT 3582	0.7	GENERAL SYSTEM PURCHASERS
8040847		4703301426	108		JOSEPH E BARNETT 4942	5.0	GENERAL SYSTEM PURCHASERS
8040857		4703300000	108		JOSEPH HAMMOND 3722	3.0	GENERAL SYSTEM PURCHASERS
8040773		4704102119	108		L BENNETT 12398	7.0	GENERAL SYSTEM PURCHASERS
8040856		4705301391	108		L J DAVIS 3808	4.0	GENERAL SYSTEM PURCHASERS
8040709		4704301499	108		LEE FRANCIS 7597	4.0	GENERAL SYSTEM PURCHASERS
8040710		4703301503	108		LYNCH & STOUT 7728	3.0	GENERAL SYSTEM PURCHASERS
8040702		4703301569	108		M W SMITH 8136	5.0	GENERAL SYSTEM PURCHASERS
8040843		4703301316	108		MARY BURNSIDE 1878	4.0	GENERAL SYSTEM PURCHASERS
8040766		4700100596	108		MILLARD POLING 11503	16.0	GENERAL SYSTEM PURCHASERS
8040854		4703301464	108		MYRA ATKINSON 7351	4.0	GENERAL SYSTEM PURCHASERS
8040713		4703301522	108		N HARDMAN 7949	4.0	GENERAL SYSTEM PURCHASERS
8040672		4703301386	108		N S BATES 3695	4.0	GENERAL SYSTEM PURCHASERS
8040708		4703301488	108		NATHAN POST 7531	4.0	GENERAL SYSTEM PURCHASERS
8040705		4703301479	108		NORA B LANHAM 7441	7.0	GENERAL SYSTEM PURCHASERS
8040767		4710900753	108		POCAHONTAS LAND 12125	1.0	GENERAL SYSTEM PURCHASERS
8040839		4703301289	108		R G ROBINSON 1181	9.0	GENERAL SYSTEM PURCHASERS
8040772		4704700707	108		R L DENNIS 11921	20.0	GENERAL SYSTEM PURCHASERS
8040768		4704102056	108		R R HUPKINS 12095	9.0	GENERAL SYSTEM PURCHASERS
8040658		4703301549	108		ROBERT WAGNER 8019	3.0	GENERAL SYSTEM PURCHASERS
8040704		4703301469	108		S D GORE HRS 7380	4.0	GENERAL SYSTEM PURCHASERS
8040655		4703301575	108		SARAH BUGGESS 7965	3.0	GENERAL SYSTEM PURCHASERS

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
8040849		4703301446	108		STEPHAN L BLAKE 6910	5.0	GENERAL SYSTEM PURCHASERS
8040664		4703301571	108		STEPHEN HEIRS 8073	3.0	GENERAL SYSTEM PURCHASERS
8040657		4703301542	108		STEPHEN HINKLE 8004	3.0	GENERAL SYSTEM PURCHASERS
8040666		4703301575	108		STEPHEN PITTS 8088	4.0	GENERAL SYSTEM PURCHASERS
8040673		4703301396	108		SUSAN N JARVIS 3980	7.0	GENERAL SYSTEM PURCHASERS
8040701		4703301588	108		T H YERKEY 8134	3.0	GENERAL SYSTEM PURCHASERS
8040850		4703301449	108		TIMINTER LAWSON 6989	4.0	GENERAL SYSTEM PURCHASERS
8040682		4703301284	108		VIRGINIA B KYLE 1143	3.0	GENERAL SYSTEM PURCHASERS
8040707		4703301486	108		W A MARSH 7524	3.0	GENERAL SYSTEM PURCHASERS
8040712		4703301511	108		W B MAXWELL 7870	3.0	GENERAL SYSTEM PURCHASERS
8040779		4700100639	108		W R SHAW 11600	6.0	GENERAL SYSTEM PURCHASERS
8040700		4703301579	108		WILLIAM HAWKER 8098	4.0	GENERAL SYSTEM PURCHASERS
8040660		4703301554	108		WIRT W POST 8029	12.0	GENERAL SYSTEM PURCHASERS
8040842		4703301314	108		WM BURNSIDE 1876	5.0	GENERAL SYSTEM PURCHASERS
DIVERS BEECHER & GUNN				RECEIVED: 06/16/80 JA: WV			
8040737		4708523517	108		F C GRIMM NO 4	7.5	CONSOLIDATED GAS SUPPLY CORP
FERRELL FARM GAS CO				RECEIVED: 06/16/80 JA: WV			
8040725		4708502978	108		FERRELL #4	7.1	CONSUMERS GAS UTILITY CO
FRANCIS E CAIN				RECEIVED: 06/16/80 JA: WV			
8040650		4701301702	108		A B CHEUVRONT #3	0.3	CONSOLIDATED GAS SUPPLY CORP
8040651		4701301575	108		CHARLES ROBERTS #1	0.6	CONSOLIDATED GAS SUPPLY CORP
8040652		4708501529	108		ELISHA LEMON #1	0.9	CONSOLIDATED GAS SUPPLY CORP
8040643		4708700904	108		EZRA MILLER #1	1.0	CONSOLIDATED GAS SUPPLY CORP
8040649		4701301883	108		MOLLIS KERRY #1	1.0	CONSOLIDATED GAS SUPPLY CORP
8040654		4708709160	108		JANE BLOSSER #1 (NELLIE MACE)	0.9	CONSOLIDATED GAS SUPPLY CORP
8040646		4708700851	108		JANE BLOSSER OIL & GAS #1	1.0	CONSOLIDATED GAS SUPPLY CORP
8040653		4701301494	108		JAY SMITH #1	0.6	CONSOLIDATED GAS SUPPLY CORP
8040644		4708700882	108		JOHN MACE #1	1.0	CONSOLIDATED GAS SUPPLY CORP
8040645		4708700865	108		MAUDE HALE #1	1.0	CONSOLIDATED GAS SUPPLY CORP
GENE STALNAKER INC				RECEIVED: 06/16/80 JA: WV			
8040799		4700101169	103		B-32-1	25.0	COLUMBIA GAS TRANSMISSION CORP
8040800		4701702522	103		B-38-1	25.0	COLUMBIA GAS TRANSMISSION CORP
GIBSON GAS CO				RECEIVED: 06/16/80 JA: WV			
8040691		4708524316	103		EVELYN MCCUY H-758	30.0	CONSOLIDATED GAS SUPPLY CORP
GLENN L HAUGHT & SONS				RECEIVED: 06/16/80 JA: WV			
8040813		4708524248	103		BETTY SEMMELMAN H-728	25.0	COLUMBIA GAS TRANSMISSION CORP
8040819		4708524388	103		D NEWLON H-847	25.0	COLUMBIA GAS TRANSMISSION CORP
8040820		4708524389	103		D NEWLON H-848	25.0	COLUMBIA GAS TRANSMISSION CORP
8040827		4708524359	103		GOLDIE KESTER H-797	25.0	COLUMBIA GAS TRANSMISSION CORP
8040817		4708524360	103		GOLDIE KESTER H-798	25.0	COLUMBIA GAS TRANSMISSION CORP
8040822		4708524273	103		HOWARD BARTON H-747	25.0	COLUMBIA GAS TRANSMISSION CORP
8040815		4708524268	103		MARY GARDNER H-741	25.0	COLUMBIA GAS TRANSMISSION CORP

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
8040816		4708524269	103		MARY GARDNER H-742	25.0	COLUMBIA GAS TRANSMISSION CORP
8040821		4708524270	103		MARY GARDNER H-743	25.0	COLUMBIA GAS TRANSMISSION CORP
8040824		4708524317	103		MARY WELCH H-756	25.0	COLUMBIA GAS TRANSMISSION CORP
8040825		4708524318	103		MARY WELLH H-757	25.0	COLUMBIA GAS TRANSMISSION CORP
8040818		4708524384	103		ROBERT BARGELOH H-846	25.0	COLUMBIA GAS TRANSMISSION CORP
8040826		4708524319	103		ST LUKES U M CHURCH H-750	25.0	COLUMBIA GAS TRANSMISSION CORP
8040823		4708524276	103		ST LUKES U M CHURCH H-755	25.0	COLUMBIA GAS TRANSMISSION CORP
8040811		4708524275	103		ST LUKES UM CHURCH H-752	25.0	COLUMBIA GAS TRANSMISSION CORP
8040814		4708524255	103		T R FRASHURE #H-733	25.0	COLUMBIA GAS TRANSMISSION CORP
GLENN W JOHNSON DBA JOHNSON PRODUCI					RECEIVED: 06/16/80 JA: WV		
8040836		4709721780	108		WAGNER #1	3.2	CONSOLIDATED GAS SUPPLY CO
8040837		4709721781	108		WILLIAMS #1	4.4	CONSOLIDATED GAS SUPPLY CO
J & J ENTERPRISES INC					RECEIVED: 06/16/80 JA: WV		
8040732		4701722326	103		B-261 DOD-2326	20.0	COLUMBIA GAS TRANSMISSION CORP
8040731		4700121183	103		B-275 BAR-1183	20.0	CONSOLIDATED GAS SUPPLY CORP
8040733		4701722448	103		B-276 DOD-2448	20.0	COLUMBIA GAS TRANSMISSION CORP
J W STONE					RECEIVED: 06/16/80 JA: WV		
8040805		4708701295	108		RALPH NICHOLS #01	4.5	COLUMBIA GAS TRANSMISSION CORP
MAGNUM OIL CORP					RECEIVED: 06/16/80 JA: WV		
8040806		4708504434	103		GLENN MAXSUN NO 1 RIT-4434	23.0	CARNEGIE NATURAL GAS CO
MAXUM DRILLING PROGRAM					RECEIVED: 06/16/80 JA: WV		
8040693		4708524363	103		L M STANLEY H-802	24.0	CONSOLIDATED GAS SUPPLY CORP
8040694		4708524364	103		L M STANLEY H-811	28.0	CONSOLIDATED GAS SUPPLY CORP
MINUTEMAN DRILLING FUND LTD					RECEIVED: 06/16/80 JA: WV		
8040698		4702103018	108		SANDY NO 1	17.0	EQUITABLE GAS CO
8040699		4702103019	108		SANDY NO 2	17.0	EQUITABLE GAS CO
OLIN B WETZEL					RECEIVED: 06/16/80 JA: WV		
8040722		4708501704	108		BUHL STANLEY #1	1.9	CARNEGIE NATURAL GAS CO
8040834		4701700622	108		G W LUWTHER HEIRS #1	2.6	CONSOLIDATED GAS SUPPLY CORP
8040829		4701701026	108		G W LUWTHER HEIRS #2	1.7	CONSOLIDATED GAS SUPPLY CORP
8040832		4701700400	108		J M MAXWELL #1	1.3	EQUITABLE GAS CO
8040833		4701700248	108		M K WILCUX #1	1.8	CONSOLIDATED GAS SUPPLY CORP
8040831		4708501922	108		ROYAL H & GEURGIA COX #1	1.8	CARNEGIE NATURAL GAS CO
PENNZOIL COMPANY					RECEIVED: 06/16/80 JA: WV		
8040808		4708702615	108		G L LEWIS #3	0.0	CONSOLIDATED GAS SUPPLY CORP
QUAKER STATE OIL REFINING CORP					RECEIVED: 06/16/80 JA: WV		

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DFN	WELL NAME	PROD	PURCHASER
8040759		4703923395	103		COPENHAVER #11 62150-11	2.4	COLUMBIA GAS TRANSMISSION CORP
8040757		4703923382	103		COPENHAVER #2 62150-2	2.4	COLUMBIA GAS TRANSMISSION CORP
8040756		4703923383	103		DRAKE #2 62150-2	8.0	COLUMBIA GAS TRANSMISSION CORP
8040755		4703923384	103		DUNBAR #2 62150-2	9.4	COLUMBIA GAS TRANSMISSION CORP
8040762		4703923381	103		FACEMYER #2 62115-2	2.0	COLUMBIA GAS TRANSMISSION CORP
8040760		4703923396	103		FISHER #1 62823-1	11.5	COLUMBIA GAS TRANSMISSION CORP
8040765		4703923387	103		HUMPHREYS #2 62150-2	1.7	COLUMBIA GAS TRANSMISSION CORP
8040764		4703923388	103	*	MOHLER LUMBER CO #5 62115-5	1.7	COLUMBIA GAS TRANSMISSION CORP
8040763		4703923390	103		RENNICK #2 62115-2	3.1	COLUMBIA GAS TRANSMISSION CORP
8040761		4703923391	103		WEBB #5 62150-3	1.3	COLUMBIA GAS TRANSMISSION CORP
R & R ASSOCIATES LTD				RECEIVED: 06/16/80 JA: WV			
8040689		4708524354	103		BRADLEY DAVIS H-800	30.0	COLUMBIA GAS TRANSMISSION CORP
8040690		4708524355	103		BRADLEY DAVIS H-801	24.0	COLUMBIA GAS TRANSMISSION CORP
8040687		4708524349	103		DEWILSON LAW H-795	20.0	CONSOLIDATED GAS SUPPLY CORP
8040688		4708524350	103		DEWILSON LAW H-796	20.0	CONSOLIDATED GAS SUPPLY CORP
8040686		4708524347	103		THOMAS DUERR H-793	28.0	CONSOLIDATED GAS SUPPLY CORP
8040786		4708524348	103		THOMAS DUERR H-794	18.0	CONSOLIDATED GAS SUPPLY CORP
ROBERT L HOLLAND				RECEIVED: 06/16/80 JA: WV			
8040835		4701701240	108		KNIGHT NO 4	2.0	EQUITABLE GAS CO
ROYAL OIL & GAS CORPORATION				RECEIVED: 06/16/80 JA: WV			
8040809		4700701376	103		KENNETH GERWIG #1	15.0	COLUMBIA GAS TRANSMISSION CORP
STANDARD GAS CO				RECEIVED: 06/16/80 JA: WV			
8040801		4709700038	108		TALBUT #1	24.6	COLUMBIA GAS TRANSMISSION CORP
STERLING DRILLING & PROD CO INC				RECEIVED: 06/16/80 JA: WV			
8040802		4701501610	103		FOSTER #1 SN #105	18.0	
8040804		4708703224	103		HAROLD #169	12.6	PENDING - COLUMBIA GAS TRANS CORP
8040803		4708703198	103		ODELL #137	20.7	COLUMBIA GAS TRANS CORP
TALLY-HO OIL & GAS CO				RECEIVED: 06/16/80 JA: WV			
8040787		4710700952	108		KINCHELOE #2	1.2	PENNZOIL CO
TEXAS INTERNATIONAL PET CORP				RECEIVED: 06/16/80 JA: WV			
8040739		4700701415	103		ELSIE MUATS ETAL #1	40.0	
8040740		4700701410	103		J H GREATHOUSE #2	40.0	
8040741		4700701422	103		OLIVE LLOYD ETAL #2	45.0	
8040794		4704700808	103		POCAHONTAS LAND CORP #A-24	35.0	CONSOLIDATED GAS SUPPLY CORP
8040792		4704700807	103		POCAHONTAS LAND CORP A-25	55.0	CONSOLIDATED GAS SUPPLY CORP
8040793		4704700809	103		POCAHONTAS LAND CORP A-49	35.0	CONSOLIDATED GAS SUPPLY CORP
THE MUTUAL OIL & GAS COMPANY				RECEIVED: 06/16/80 JA: WV			
8040754		4708722013	108		CHAMBERS #1	0.9	CONSOLIDATED GAS SUPPLY CORP

* ADDITIONAL PURCHASERS(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	TEN	WELL NAME	PROD	PURCHASER
8040753		4708722010	108		CHAMBERS #2	0,9	CONSOLIDATED GAS SUPPLY CORP
8040745		4708722015	108		CHAMBERS #3	0,9	CONSOLIDATED GAS SUPPLY CORP
8040744		4708722014	108		ELLIS-LEWIS #1	1,2	CONSOLIDATED GAS SUPPLY CORP
8040746		4708722017	108		ELLIS-LEWIS #2	1,2	CONSOLIDATED GAS SUPPLY CORP
8040748		4708722019	108		ELLIS-LEWIS #3	57,0	CONSOLIDATED GAS SUPPLY CORP
8040647		4708722020	108		ELLIS-LEWIS #4	61,0	CONSOLIDATED GAS SUPPLY CORP
8040747		4708722018	108		ELLIS-LEWIS #5	1,5	CONSOLIDATED GAS SUPPLY CORP
8040752		4702121957	108		FISHER #1	4,8	EQUITABLE GAS
8040749		4702121980	108		FISHER #2	4,8	EQUITABLE GAS
8040750		4702121988	108		MURPHY #1	7,6	EQUITABLE GAS
8040751		4702121985	108		MURPHY #2	7,6	EQUITABLE GAS
8040743		4708722008	108		PEROT 3-A	2,7	CONSOLIDATED GAS SUPPLY CORP
8040648		4708722006	108		PEROT 2-A	27,2	CONSOLIDATED GAS SUPPLY CORP
TRIU PETROLEUM CORP					RECEIVED: 06/16/80 JA: WV		
8040798		4700701359	103		BAKER #1	36,5	COLUMBIA GAS TRANSMISSION CORP
8040797		4700701357	103		CARPER C #1	36,5	COLUMBIA GAS TRANSMISSION CORP
8040795		4700701191	103		HELMICK A #1	36,5	COLUMBIA GAS TRANSMISSION CORP
8040796		4700701192	103		SINGLETON A #1	36,5	COLUMBIA GAS TRANSMISSION CORP
TUG FORK CORP					RECEIVED: 06/16/80 JA: WV		
8040810		4704301030	108		STEIN & MCCOMAS 18-847	22,2	INDUSTRIAL GAS CORP
8040742		4709900021	108		WILSON COAL LAND CO 10-527	24,4	INDUSTRIAL GAS CORP
UNION DRILLING INC					RECEIVED: 06/16/80 JA: WV		
8040726		4700701402	103		ARTHUR & REVA SHAVER #1501	0,0	COLUMBIA GAS TRANSMISSION CORP
8040727		4709701942	103		KARL ARBUGAST #1 1528	0,0	COLUMBIA GAS TRANSMISSION CORP
V-H JOINT VENTURE					RECEIVED: 06/16/80 JA: WV		
8040696		4701722425	103		RUBY FARR MAXWELL H-735	40,0	COLUMBIA GAS TRANSMISSION CORP
WACO OIL AND GAS CO INC					RECEIVED: 06/16/80 JA: WV		
8040807		4702103522	107		CARSON #1A	30,0	COLUMBIA GAS TRANSMISSION CORP
WARREN R HAUGHT AGENT					RECEIVED: 06/16/80 JA: WV		
8040692		4708524380	103		ERNEST GUFF H-820	20,0	COLUMBIA GAS TRANSMISSION CORP
8040697		4708524274	103		EVANS-MUATS H-754	630,0	CONSOLIDATED GAS SUPPLY CORP
8040695		4708524367	103		VIRGIL WILSON #H-792	20,0	CONSOLIDATED GAS SUPPLY CORP
309 OIL & GAS CO					RECEIVED: 06/16/80 JA: WV		
8040728		4708503198	108		MORRIS #5	2,0	CONSOLIDATED GAS SUPPLY CORP

OTHER PURCHASERS

8040623	MONTANA POWER CO
8040624	MONTANA POWER CO
8040625	MONTANA POWER CO

[FR Doc. 80-20734 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-C

[Vol. 233]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

July 3, 1980

The Federal Energy Regulatory Commission received notices of determination from the jurisdictional agencies listed herein, for the indicated wells, pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a (D) in the DEN column. Estimated annual production is in million cubic feet (MMcf).

The applications for determination in these proceedings together with a copy of description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission by July 28, 1980.

Please reference the FERC Control Number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
KENTUCKY DEPARTMENT OF MINES & MINERALS							
ABLE ENERGY COMPANY					RECEIVED: 06/17/80 JA: KY		
8040973	501377	1622129262	107		IRA HUMPHRIES COMM NO 1	3.0	WESTERN KENTUCKY GAS CO
ASHLAND EXPLORATION INC					RECEIVED: 06/17/80 JA: KY		
8041007	501401	1611532649	103		A L GRIFFITH NO 2-RB	0.0	
8041009	501403	1611532650	103		A L GRIFFITH NO 3-RB	29.2	
8041004	501398	1611532446	103		HAILEY-LYON UNIT NO 1-R	63.9	
8041008	501402	1611532981	103		BOND-DORTON UNIT NO 1-R	29.6	
8041010	501404	1611532173	103		CONLEY-PACK-ROSS UNIT #2-RB	3.7	
8041000	501394	1611532234	103		DORTON-FERGUSON #1-R	60.3	
8040999	501393	1611532867	103		FLOINE PRESTON ET AL NO 1-R	65.0	
8041001	501395	1611532147	103		HILL-WILLIAMS RIGSBY UNIT #1-R	69.0	
8040997	501391	1611532130	103		IRA LESTER NO 3-RB	15.7	
8041011	501405	1611532343	103		IRA LESTER-EVANS #1-R	29.6	
8040996	501390	1611532174	103		IRA LESTER-EVANS #2RB	15.0	
8041005	501399	1611532107	103		LYON & LYON UNIT #1-R	52.2	
8040995	501389	1611532411	103		LYON-HOLBROOK-LESTER #2RB	14.6	
8041002	501396	1611531444	103		LYONS-HOLBROOK LESTER #1-R	44.5	
8041006	501400	1611532824	103		MACKENZIE-GRIFFITH UNIT NO 1-R	40.5	
8041013	501407	1611532750	103		OTTO JOHNSON NO 1-R	69.4	
8040998	501392	1611532579	103		OVA GREEN NO 1-R	0.0	
8041003	501397	1611532578	103		SHERMAN LYON NO 2-RB	10.6	
8041014	501408	1611532616	103		SHERMAN LYON NO 3-RB	14.6	
8041012	501406	1611531911	103		SHERMAN LYONS #1-R	70.1	
8041015	501409	1611500000	103		SKAGGS-KELLY UNIT #2-RB	20.8	
BETHLEHEM MINES CORP					RECEIVED: 06/17/80 JA: KY		
8040977	500178	1611900000	108		JOHN B SLONE FARM NO 1	7.5	COLUMBIA GAS TRANSMISSION CORP
8040978	500179	1611900000	108		JOHN B SLONE FARM NO 2	7.5	COLUMBIA GAS TRANSMISSION CORP
8040979	500180	1611900000	108		JOHN B SLONE FARM NO 3	7.5	COLUMBIA GAS TRANSMISSION CORP
C D JACOBS					RECEIVED: 06/17/80 JA: KY		
8040974	501378	1619500000	107		BOWLES NO 6	25.0	COLUMBIA GAS TRANSMISSION CORP
8040975	501379	1619500000	107		HUFFMAN NO 1	51.6	KENTUCKY WEST VIRGINIA GAS CO
J SCOTT TALBOTT					RECEIVED: 06/17/80 JA: KY		
8040976	501380	1619500000	103		LOGAN T-9	0.0	KENTUCKY WEST VIRGINIA GAS CO
KENTUCKY WEST VIRGINIA GAS CO					RECEIVED: 06/17/80 JA: KY		
*8040990	501384	1619500000	103		1645 - DENVER MINIARD	12.3	KENTUCKY WEST VIRGINIA GAS CO
*8040994	501388	1611900000	103		1681 - DORIS B COMBS	9.0	KENTUCKY WEST VIRGINIA GAS CO
*8040987	501381	1619500000	103		7256 - KENTUCKY UNION CO	21.3	KENTUCKY WEST VIRGINIA GAS CO
*8040988	501382	1611900000	103		7257 - KENTUCKY UNION CO	12.3	KENTUCKY WEST VIRGINIA GAS CO
*8040989	501383	1619500000	103		7261 - THOMAS LOGAN	8.8	KENTUCKY WEST VIRGINIA GAS CO
LORETTA OIL & GAS INC					RECEIVED: 06/17/80 JA: KY		
8040972	501376	1605100000	107		CARL HOWARD NO 1	0.0	
8040971	501375	1605100000	107		CARL HOWARD NO 3	0.0	

* ADDITIONAL PURCHASER(S)(SEE END OF LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
RAY RESOURCES DIV OF FLYING DIAMOND		RECEIVED: 06/17/80 JA: KY					
8040985	500520	1619300000	108		KENTUCKY RIVER COAL #101	2,6	COLUMBIA GAS TRANSMISSION CORP
8040983	500518	1619300000	108		KENTUCKY RIVER COAL #102	4,3	
8040984	500519	1619300000	108		KENTUCKY RIVER COAL #103	2,6	COLUMBIA GAS TRANSMISSION CORP
8040982	500517	1619300000	108		KENTUCKY RIVER COAL #104	2,9	COLUMBIA GAS TRANSMISSION CORP
8040981	500516	1619300000	108		KENTUCKY RIVER COAL #105	2,6	COLUMBIA GAS TRANSMISSION CORP
8040980	500515	1619300000	108		KENTUCKY RIVER COAL #107	9,3	COLUMBIA GAS TRANSMISSION CORP
8040986	500523	1619300000	108		KENTUCKY RIVER COAL #117	4,2	COLUMBIA GAS TRANSMISSION CORP
SARGENT OIL & GAS CO INC		RECEIVED: 06/17/80 JA: KY					
8040991	501385	1610700000	102		#2 WOODRUFF HEIRS	58,4	TEXAS GAS TRANSMISSION CORP
8040992	501386	1610700000	102		#6 WOODRUFF HEIRS	182,5	TEXAS GAS TRANSMISSION CORP
WARREN DRILLING CO INC		RECEIVED: 06/17/80 JA: KY					
8040993	501387	1614900000	102		CECIL HOWARD #1 (KY-34197)	180,0	ORBIT GAS CO
LOUISIANA OFFICE OF CONSERVATION							
MCMORAN EXPLORATION CO		RECEIVED: 06/17/80 JA: LA					
8040858	80-1865	1710922202	102		GORDON J BRIEN SR #2	700,0	UNITED GAS PIPELINE CO
WEST VIRGINIA DEPARTMENT OF MINES							
CONSOLIDATED GAS SUPPLY CORPORATION		RECEIVED: 06/17/80 JA: WV					
8040927		4704100000	108		A A ROHRBOUGH 8433	3,0	GENERAL SYSTEM PURCHASERS
8040929		4709500891	108		A BECKMAN 550	5,0	GENERAL SYSTEM PURCHASERS
8040961		4702103084	108		A VAN HORN 6308	10,0	GENERAL SYSTEM PURCHASERS
8040919		4704102350	108		ALEX BROWN 8268	7,0	GENERAL SYSTEM PURCHASERS
8040920		4704102351	108		AMANDA BUTCHER 8274	0,4	GENERAL SYSTEM PURCHASERS
8040874		4709100145	108		BELLE S PAYNE 6887	1,0	GENERAL SYSTEM PURCHASERS
8040871		4704900374	108		BENJAMIN PLASTER 2730	2,0	GENERAL SYSTEM PURCHASERS
8040909		4704102280	108		BRENT MAXWELL 4920	3,0	GENERAL SYSTEM PURCHASERS
8040925		4704102282	108		C D HORNBECK 8944	7,0	GENERAL SYSTEM PURCHASERS
8040917		4704102315	108		C H LOVETT 8217	5,0	GENERAL SYSTEM PURCHASERS
8040867		4704900346	108		C V WOOD 851	4,0	GENERAL SYSTEM PURCHASERS
8040913		4704102358	108		C W POST 8371	7,0	GENERAL SYSTEM PURCHASERS
8040937		4710500794	108		CABOT SNIDER 6283	2,0	GENERAL SYSTEM PURCHASERS
8040964		4703301366	108		COLUMBUS HUSTEAD 3333	6,0	GENERAL SYSTEM PURCHASERS
8040936		4710300698	108		D H COX 8112	3,0	GENERAL SYSTEM PURCHASERS
8040969		4703302112	108		D L HALL 1945	0,7	GENERAL SYSTEM PURCHASERS
8040901		4704102249	108		DAVID TETER 3721	9,0	GENERAL SYSTEM PURCHASERS
8040897		4704102272	108		E ALKIRE 4568	4,0	GENERAL SYSTEM PURCHASERS
8040908		4704102285	108		ED ALKIRE 5072	8,0	GENERAL SYSTEM PURCHASERS
8040896		4704102235	108		ED SNISHER 3179	2,0	GENERAL SYSTEM PURCHASERS
8040880		4704102242	108		EDMISTON HEIRS 3402	5,0	GENERAL SYSTEM PURCHASERS
8040962		4703301358	108		EDMUND SOUTHERN 2986	4,0	GENERAL SYSTEM PURCHASERS
8040970		4703302123	108		ELIAS STARK 5242	8,0	GENERAL SYSTEM PURCHASERS
8040905		4704102301	108		ELIZA ALFRED 7825	10,0	GENERAL SYSTEM PURCHASERS
8040910		4704102279	108		ELIZABETH MCGUIRE 4917	4,0	GENERAL SYSTEM PURCHASERS
8040892		4703301624	108		ELLIS P PHILLIPS 11076	2,0	GENERAL SYSTEM PURCHASERS
8040872		4704900375	108		F A BROWN 2734	2,0	GENERAL SYSTEM PURCHASERS
8040902		4704102308	108		F B RILEY 7897	0,2	GENERAL SYSTEM PURCHASERS

* ADDITIONAL PURCHASERS(SEE END OF LIST)

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FERC NO	JA DKT NO	API NO	SEQ	PEN	WELL NAME	PROD	PURCHASER
8040878		4710300655	108		F F MORGAN 68	4.0	GENERAL SYSTEM PURCHASERS
8040932		4710300669	108		F F MORGAN 515	3.0	GENERAL SYSTEM PURCHASERS
8040960		4703101900	108		F M SIGLEY 5727	1.5	GENERAL SYSTEM PURCHASERS
8040898		4704102266	108		FREDA M COLVIN 8281	1.5	GENERAL SYSTEM PURCHASERS
8040926		4704100000	108		G W CHUKMAN 5917	6.0	GENERAL SYSTEM PURCHASERS
8040895		4703302117	108		GEO F TETRICK 1421	4.0	GENERAL SYSTEM PURCHASERS
8040889		4703500716	108		GEORGE GATCHELL 9423	3.0	GENERAL SYSTEM PURCHASERS
8040881		4704102240	108		GEORGE LAWSON 3304	9.0	GENERAL SYSTEM PURCHASERS
8040900		4704102251	108		GEORGE LAWSON 3797	4.0	GENERAL SYSTEM PURCHASERS
8040912		4704102353	108		GEORGE W SMITH 8351	3.0	GENERAL SYSTEM PURCHASERS
8040915		4704102360	108		H D BUTCHER 8394	1.0	GENERAL SYSTEM PURCHASERS
80-40894		4703301622	108		HARVEY M FURNER 11072	3.0	GENERAL SYSTEM PURCHASERS
8040904		4704102304	108		HUDSON BAILEY 7889	1.5	GENERAL SYSTEM PURCHASERS
8040923		4704102340	108		ISRAEL SIMMONS 8300	4.0	GENERAL SYSTEM PURCHASERS
8040916		4704102310	108		J A J LIGHTBURN 7922	9.0	GENERAL SYSTEM PURCHASERS
8040928		4709100148	108		J C JOHNSON 7556	3.0	GENERAL SYSTEM PURCHASERS
8040875		4709100149	108		J C JOHNSON 7558	4.0	GENERAL SYSTEM PURCHASERS
8040870		4704900363	108		J P SANDY 2036	4.0	GENERAL SYSTEM PURCHASERS
8040877		4710300649	108		J U MORGAN 16	4.0	GENERAL SYSTEM PURCHASERS
8040879		4704102245	108		J W ALLMAN 3404	1.5	GENERAL SYSTEM PURCHASERS
8040933		4710300683	108		J W HATFIELD 2120	5.0	GENERAL SYSTEM PURCHASERS
8040906		4704102298	108		JAMES BURNS 7538	8.0	GENERAL SYSTEM PURCHASERS
8040965		4703301394	108		JAMES LANHAM 3930	14.0	GENERAL SYSTEM PURCHASERS
8040873		4704900345	108		JEPTHA HALL 3648	4.0	GENERAL SYSTEM PURCHASERS
8040887		4704102198	108		JOHN DORSEY 1259	4.0	GENERAL SYSTEM PURCHASERS
8040968		4703301914	108		L HURST 1037	3.0	GENERAL SYSTEM PURCHASERS
8040890		4704102693	108		LOT HALL 8211	1.5	GENERAL SYSTEM PURCHASERS
8040884		4704102218	108		LOUIS BENNETT 2616	9.0	GENERAL SYSTEM PURCHASERS
8040866		4704900338	108		LOUISA BRAND 756	1.0	GENERAL SYSTEM PURCHASERS
8040966		4703501502	108		M J FRANCIS 7613	8.0	GENERAL SYSTEM PURCHASERS
8040899		4704102252	108		M J HALL 3894	4.0	GENERAL SYSTEM PURCHASERS
8040885		4704102209	108		M J LAWSON 2371	3.0	GENERAL SYSTEM PURCHASERS
8040924		4703302657	108		M S BRIDGE 2874	8.0	GENERAL SYSTEM PURCHASERS
8040903		4704102307	108		MARY C BURNSIDE 7896	2.0	GENERAL SYSTEM PURCHASERS
8040963		4703301360	108		MARY E HESS 3113	4.0	GENERAL SYSTEM PURCHASERS
8040891		4704100001	108		MARY HALL 7450	3.0	GENERAL SYSTEM PURCHASERS
8040893		4703301623	108		MARY V MATHENY 11075	1.5	GENERAL SYSTEM PURCHASERS
8040914		4704102359	108		MAXWELL PRIEST 8379	2.0	GENERAL SYSTEM PURCHASERS
8040883		4704102230	108		MINOR J HALL 2976	3.0	GENERAL SYSTEM PURCHASERS
8040865		4704900337	108		N L BRAND 755	8.0	GENERAL SYSTEM PURCHASERS
8040935		4710300689	108		NATHAN LITTLE 3502	5.0	GENERAL SYSTEM PURCHASERS
8040876		4710300646	108		PETER GLOVER 3	6.0	GENERAL SYSTEM PURCHASERS
8040869		4704900362	108		R E MORGAN 2030	2.0	GENERAL SYSTEM PURCHASERS
8040921		4704102352	108		RASTLF GISSEY 8278	5.0	GENERAL SYSTEM PURCHASERS
8040918		4704102326	108		S D CAMDEN 8236	4.0	GENERAL SYSTEM PURCHASERS
8040931		4710300667	108		S J LONG 494	11.0	GENERAL SYSTEM PURCHASERS
8040907		4704102297	108		SALLY MCGARY 7315	3.0	GENERAL SYSTEM PURCHASERS
8040882		4703302121	108		T T THOMPSON HEIRS 7956	0.4	GENERAL SYSTEM PURCHASERS
8040922		4704102336	108		THOMAS CASEY HRS 8288	1.0	GENERAL SYSTEM PURCHASERS
8040930		4710300659	108		THOS M ALLEY 162	6.0	GENERAL SYSTEM PURCHASERS
8040934		4710300684	108		URIAH MILBURN 2224	3.0	GENERAL SYSTEM PURCHASERS
8040868		4704900353	108		W E TETRICK 1370	5.0	GENERAL SYSTEM PURCHASERS
8040888		4704102190	108		W G HEINZMAN 375	4.0	GENERAL SYSTEM PURCHASERS
8040886		4704102202	108		W H KELLY 2134	3.0	GENERAL SYSTEM PURCHASERS

* ADDITIONAL PURCHASERS(SEE F L OR LIST)

FERC NO	JA DKT NO	API NO	SECT	DEN	WELL NAME	PROD	PURCHASER
8040911		4704102342	108		W H WAGGY 8310	7.0	GENERAL SYSTEM PURCHASERS
8040967		4703301601	108		W H BURNSIDE 8171	3.0	GENERAL SYSTEM PURCHASERS
FRANCIS E CAIN					RECEIVED: 06/17/80 JA: WV		
8040943		4708504284	108		RACHEL LEMON #7	0.9	CONSOLIDATED GAS SUPPLY CORP
8040944		4708503082	108		RACHEL LEMON #9	0.9	CONSOLIDATED GAS SUPPLY CORP
FRANKLIN ADKINS					RECEIVED: 06/17/80 JA: WV		
8040945		4709901686	103		HUNDLEY #1	12.0	COLUMBIA GAS TRANSMISSION CORP
8040948		4709901673	103		JERRELL #1	16.0	COLUMBIA GAS TRANSMISSION CORP
8040941		4709901617	103		LOUVINS #1	16.0	COLUMBIA GAS TRANSMISSION CORP
8040950		4709901617	108		LOUVINS #1	16.0	COLUMBIA GAS TRANSMISSION CORP
8040947		4709901674	103		MARCUM #1	15.0	COLUMBIA GAS TRANSMISSION CORP
8040946		4709901685	103		PENNINGTON #1	14.0	COLUMBIA GAS TRANSMISSION CORP
8040942		4709901619	103		PERRY #1	16.0	COLUMBIA GAS TRANSMISSION CORP
8040949		4709901619	108		PERRY #1	16.0	COLUMBIA GAS TRANSMISSION CORP
8040939		4709901670	108		PORTER # 1-B	15.0	COLUMBIA GAS TRANSMISSION CORP
8040940		4709901670	103		PORTER 1-B	16.0	COLUMBIA GAS TRANSMISSION CORP
HURRIS OIL & GAS CO INC					RECEIVED: 06/17/80 JA: WV		
8040938		4701300110	108		G E HERSMAN NO 1	2.3	CABOT CORP
THE MUTUAL OIL & GAS COMPANY					RECEIVED: 06/17/80 JA: WV		
8040863		4708700789	108		CLARKSON #1 (MCRAE)	0.0	CONSOLIDATED GAS SUPPLY CORP
8040860		4708700812	108		CLARKSON #2 (MCROLL)	0.0	CONSOLIDATED GAS SUPPLY CORP
8040958		4708700851	108		CRINER #2	2.7	CONSOLIDATED GAS SUPPLY CORP
8040954		4708700876	108		HOLLAND NO 1	0.0	CONSOLIDATED GAS SUPPLY CORP
8040957		4708700838	108		J R LEWIS #1	2.2	CONSOLIDATED GAS SUPPLY CORP
8040959		4708700841	108		SALON BUTCHER #1	2.7	CONSOLIDATED GAS SUPPLY CORP
8040956		4708701610	108		SALON BUTCHER #2	2.7	CONSOLIDATED GAS SUPPLY CORP
8040859		4708700796	108		SARVER 03	0.0	CONSOLIDATED GAS SUPPLY CORP
8040862		4708700771	108		SARVER #1	0.0	CONSOLIDATED GAS SUPPLY CORP
8040955		4708700794	108		SARVER #2	0.0	CONSOLIDATED GAS SUPPLY CORP
8040864		4708701736	108		SARVER #5	0.0	CONSOLIDATED GAS SUPPLY CORP
8040951		4708700813	108		WFBB #1	0.0	CONSOLIDATED GAS SUPPLY CORP
8040952		4708700788	108		WFBB #2	0.0	CONSOLIDATED GAS SUPPLY CORP
8040861		4708700755	108		WFBB #3	0.0	CONSOLIDATED GAS SUPPLY CORP
8040953		4708700766	108		YOUNG #2	0.2	COLUMBIA GAS TRANSMISSION CORP
WARREN R HAUGHT AGENT					RECEIVED: 05/09/80 JA: WV		
8039249		4701722378	103		C P HUDSON HH8 H-734	60.0	COLUMBIA GAS TRANSMISSION CORP

OTHER PURCHASERS

8040987	KENTUCKY HYDROCARBON CO
8040988	KENTUCKY HYDROCARBON CO
8040989	KENTUCKY HYDROCARBON CO
8040990	KENTUCKY HYDROCARBON CO
8040994	KENTUCKY HYDROCARBON CO

[FR Doc. 80-20738 Filed 7-10-80, 8:45 am]

BILLING CODE 6450-85-C

[Docket No. EL79-8]

Central Power & Light Co.; Amendment to Application for Interconnection of Facilities, Provision of Transmission Services and Related Relief

July 2, 1980.

Take notice that on June 30, 1980, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) (collectively referred to as Applicants or CSW) tendered for filing an Amendment to their application filed on February 9, 1979. This Amendment, intended to be an alternative to the relief requested in their February 9, 1979 application, requests that the Commission enter an order under Sections 210, 211 and 212 of the Federal Power Act, requiring the construction of two direct current asynchronous electrical interconnections between the Electric Reliability Council of Texas (ERCOT) and the Southwest Power Pool (SWPP), as well as wheeling and other related relief.

The interconnections requested herein pursuant to Sections 210 and 212 of the Act consist of two high-voltage direct current asynchronous electrical interconnections between ERCOT and SWPP. A "North Interconnection", to be constructed by CSW, would have an initial capacity of 200 megawatts (mw) for the transmission of power between ERCOT and SWPP and would require the installation of two back-to-back direct current terminals on either side of the ERCOT-SWPP border at Oklaunion, Texas. In connection with the North Interconnection, CSW would also construct an alternating current terminal at PSO's power station in Lawton, Oklahoma and 345 kv ac transmission line from Lawton to the northern dc terminal at Oklaunion, a distance of approximately 61 miles. A "South Interconnection", to be constructed jointly by CSW and HLP, with an initial capacity of 500 mw for the transmission of power between ERCOT and SWPP would consist of a direct current transmission line approximately 153 miles long, with terminals at the CSW System's planned generating plant in Walker County, Texas and at the South Texas Project ("STP"), a generating plant co-owned by HLP, CPL, CPSB and Austin under construction near Bay City, Texas. In addition, NLP would be interconnected with CPL and other utilities at the STP terminal of the South Interconnection in order to facilitate the transmission and wheeling of power to and from the Interconnections among the ERCOT utilities.

CSW will pay for and be the "Owner" of 100 percent of the North Interconnection and CSW and NLP will pay for and be the "Owners" of the South Interconnection in the following proportions:

CSW —60%
HLP —40%

or such percentage as will result from the *pro rata* reduction of their respective percentage of Ownership in either Interconnection due to participation in ownership by other electric systems.

Under the wheeling order requested pursuant to Sections 211 and 212 of the Act, CSW, HLP and the TU companies would (when and to the extent capacity is available) be able to wheel power to and from the proposed Interconnection terminals over their transmission facilities within TIS and the SWPP initially at a rate of one mill per kilowatt hour or at such higher rate as shall be adequate to recover the costs of such wheeling pursuant to a filing made unilaterally from time to time by the party furnishing service with the appropriate regulatory authority. Likewise, any capacity in the Interconnections which may be unused at any point in time may be used by other systems in ERCOT or SWPP upon request, subject to interruption by any Owner desiring to utilize its entire capacity and subject to payment of such rates as shall be adequate to recover the cost of such use of the Interconnections, and other terms and conditions, as may be unilaterally filed from time to time with the Commission. Any such request for usage of the Interconnections for transfer of firm power by any such other system shall be made at least thirty (30) days prior to the beginning of such proposed transfers in order to allow proper scheduling. Use of the Interconnections for transfers of firm power by other systems shall be available only subject to planned or actual usage of the Interconnections by the Owners for any purpose. Any request for the usage of the Interconnections for transfer of interruptible economy or emergency energy by any such other systems shall be made at least one hour prior to the beginning of such proposed transfers (this notice requirement may be waived in an emergency).

Any person desiring to be heard or to protest said Amendment should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commissions Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before July 18, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20730 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-357]

Colorado Interstate Gas Co.; Amendment to Application

July 2, 1980

Take notice that on June 30, 1980, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP80-357 an amendment to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce, by which amendment Applicant seeks authorization to allocate excess gas supply increases *pro rata* among full requirement, direct transmission sales, and partial requirement customers, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

The proposed allocations are set forth in paragraphs 6.2 and 6.3 of Rate Schedule EX-1 of Applicant's FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 27.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 18, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the

Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20728 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP72-157, et al.]

Consolidated Gas Supply Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

July 3, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plants. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 21, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Appendix

Filing date	Company	Docket No.	Type filing
6/24/80	Consolidated Gas Supply Corporation.	RP72-157	Report.
6/27/80	Cities Service Gas Company.	RP72-142, et al.	Plan.
6/27/80	Midwestern Gas Transmission Company.	RP80-23	Report.
6/27/80	East Tennessee Natural Gas Company.	RP78-65	Report.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20712 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-410]

Consolidated Gas Supply Corp.; Application

July 3, 1980.

Take notice that on June 19, 1980, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP80-410 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two points of delivery to National Fuel Gas Supply Corporation (National Fuel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon an emergency sales connection with National Fuel at Sanford and a connection at Noble Street (also known as South Belmont and Dixon), both in Allegany County, New York. These facilities, it is stated, were originally installed by Applicant's predecessor, New York State Natural Gas Corporation, and utilized in making deliveries to Producers Gas Company and Iroquois Gas Company, predecessors of National Fuel. Applicant asserts that due to the changing operations of Applicant and National Fuel these delivery points are no longer necessary, and that National Fuel has requested that deliveries at these points be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20713 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-225]

Delmarva Power & Light Co.; Order Accepting Power Purchase Agreement for Filing, Granting Interventions, Granting Waiver, and Denying Request for Investigation

July 2, 1980.

On February 3, 1980, Delmarva Power and Light Company (DPL) tendered for filing a power purchase agreement with the Atlantic City Electric Company (ACE). The filing was completed on April 3, 1980. Under the terms of the agreement, DPL will sell one-eighth (approximately 50 MW) of the capacity and energy of DPL's Indian River Unit No. 4 to ACE.[1] The proposed sale will commence on the day the unit qualifies as "installed capacity" under the Pennsylvania, New Jersey, Maryland Interconnection (PJM) Agreement and continue until May 31, 1985.[2]

The agreement also provides for DPL to deliver the energy purchased by ACE, less transmission losses, over DPL's 230 KV transmission system to the Keeney Substation interconnection point between the two parties. Under the terms of the agreement ACE will pay DPL (1) a return of 11.11%, including 14.00% on common equity, and applicable depreciation expense on one-eighth of the investment in Indian River Unit No. 4, (2) one-eighth of the operation and maintenance costs of the unit and (3) a monthly transmission charge of $35,000. DPL estimates that charges during the first year of the agreement will be approximately $14 million.

DPL will render monthly bills to ACE based upon the estimated charges, with an adjustment to be made in the following billing month for the actual costs. Charges for operation and maintenance expenses which cannot be accurately determined each month (e.g. income taxes) will be estimated with an

[1] Indian River Unit No. 4 is a 400 MW coal-fired generating unit presently under construction at Millsboro, Delaware. It is scheduled for commercial operation in the fall of 1980.

[2] On February 29, 1980, ACE filed a statement of concurrence. Rate schedule designations are:

Designation and Description

Rate Schedule FPER No. 44—Power Purchase Agreement.

Supplement No. 1 to Rate Schedule FERC No. 44—Schedule I.

Supplement No. 2 to Rate Schedule FERC No. 44—Schedule II.

adjustment for actual expense at the end of the year. In addition, charges for both the cost of supervision and general administration have been established at annual fees of $12,000 each. The agreement proposes to adjust the charges annually in order to reflect increased labor costs.

Notice of the filing was issued on February 11, 1980, with comments, protests, or petitions to intervene due on or before March 3, 1980.

On March 3, 1980, the Public Advocate of Delaware (PAD) filed a petition to intervene, requesting a hearing. PAD alleges that the agreement may be detrimental to DPL's retail customers in that it would require these customers to pay for electricity produced from high cost oil-fired generation, while less expensive coal-fired generation is sold to a new wholesale customer outside the State of Delaware.

The Public Service Commission of the State of Delaware (PSC) filed a notice of intervention on March 3, 1980. PSC contends that it is not possible to determine from the information filed whether the rates are fully compensatory. Therefore, PSC indicates that a hearing is necessary to determine whether the statutory requirements are satisfied and whether the rate may have a detrimental effect on retail customers of DPL. PSC also states that DPL's filing suggests that the transaction involves a sale or lease of facilities. Therefore, PSC requests that the Commission determine whether the transaction is subject to the requirements of Section 203 after a hearing on this issue.

On March 17, 1980, ACE filed a supplemental petition and motion for summary disposition. ACE requests that the Commission deny PSC's request for a hearing. ACE points out that PSC has not alleged that the unit power rates are unjust and unreasonable, only that it is unable to determine the reasonableness, of the rates from the information supplied. Citing FPC Opinion No. 701, *Connecticut Light and Power Company*, 52 FPC 175 (1974), ACE contends that the rates are just and reasonable since substantially all of the components of the unit power rates will precisely reflect the actual costs of DPL's Indian River Unit No. 4. Therefore, ACE asks that PSC's request for a hearing on the proposed rates be denied and that the agreement be accepted for filing and made effective.

ACE requests that the Commission deny PSC's request for hearing under Section 203, alleging that that section does not apply to the transaction which is a unit sale of capacity and energy rather than a sale or lease of facilities. Furthermore, ACE requests a declaration of this Commission's exclusive jurisdiction over this transaction.

On April 11, 1980, PSC filed an answer to ACE's supplemental petition reiterating its request for an investigation of the proposed rates. In the alternative, PSC requests the Commission to order an investigation under Section 307 of the Federal Power Act. With respect to ACE's request for a declaration of FERC's exclusive jurisdiction over this transaction, PSC contends that the agreement between DPL and ACE creates an undivided cotenancy, a lease or a sale of the facilities. Therefore, under Section 201(b) of the Federal Power Act, PSC contends the Commission's jurisdiction is limited to the rates contained in the agreement and the state retains jurisdiction over disposition of the facilities.

On March 26, 1980, Old Dominion Electric Cooperative filed an untimely petition to intervene. Old Dominion states that it is negotiating a new wholesale power contract between DPL and three of its member cooperatives and any decisions in the instant submittal will have a bearing on the anticipated wholesale rates applicable to the cooperatives. Therefore, it requests to be a party to any proceedings in this docket.

On May 5, 1980, the Public Advocate of New Jersey [Advocate] filed an untimely petition to intervene. In its petition Advocate states its support for the sale by DPL to ACE and requests that the Commission act promptly and approve the contract.

Discussion

The Commission finds that the transaction between DPL and ACE represents a unit sale as defined by *Connecticut Light and Power Company*, Opinion No. 701, 52 FPC 175, 176 (1974):

> [A] "unit sale" . . . consists of the sale of a specified portion of the capacity of a particular generating unit to a second utility for a specified period of time. The buying utility is entitled to the capacity and associated energy of that portion of the unit that is purchased for which the buyer pays his proportionate share of all of the fixed and running costs of the unit including return on investment in the unit. Such fixed charges continue to be paid during the term of the contract regardless of whether the unit is out of service for scheduled or unscheduled maintenance.

A unit sale generally consists of the sale or lease of the output of a unit and dedication of its capacity, rather than the sale or lease of facilities themselves. The Commission's jurisdiction to authorize a sale or lease of facilities by a public utility depends upon the existence of jurisdictional, that is, transmission, facilities which are part of the sale or lease. Section 203 of the Federal Power Act. Because the transaction involves the provision of transmission service, rather than a specific dedication of transmission lines, the transaction does not involve a sale or lease of transmission facilities.[3] The transmission service is similar to that service provided by DPL to other utilities, whether as a discrete service or as a component of its firm requirements or interchange services. Therefore, the Commission shall deny the PSC's request for a hearing under Section 203.

DPL utilizes an incremental rate of return in determining the monthly fixed charges associated with Indian River Unit No. 4. In light of the unit sale nature of the transaction, this is acceptable. *See Connecticut Light and Power Company, supra.* With the exception of the charges for the cost of supervision and general administration, the remaining charges for production costs associated with Indian River Unit No. 4 are pro rata portions (i.e. one-eighth) of the actual operation and maintenance expenses of the unit. Based on data for supervision and general administration costs for the three existing Indian River units, these charges also appear to be reasonable. However, DPL has indicated that the charges are to be escalated annually by the average rate of wage increases for DPL employes. This will constitute a change in rate, which DPL must file under Section 35.13 of our regulations, with supporting cost data.

Based upon our review of average system investment and costs, we will accept DPL's proposed transmission rate of $35,000 per month.

The charges proposed by DPL are found to be cost-justified and we shall accept these rates for filing. Because the sale is to commence upon the date of commercial operation of the unit, which is projected to be the fall of 1980, we shall grant DPL's request for a waiver of section 35.3 of the Commission's regulations and permit the rates to go into effect as of that date.

The allegations raised by PAD, PSC and Old Dominion relate to the question of prudence. They claim, alternatively, that the sale of coal-fired capacity and energy should not be made to ACE, or that any sale actually made should be priced at average [or perhaps incremental] system costs. Their

[3] The Commission takes no position at this time as to whether it would determine a particular unit sale to be a sale or lease of facilities if specific transmission lines were assigned to the transaction. The factual setting of the particular transaction may dictate the result.

contention is that the sale itself or the pricing of the sale will force DPL's firm brequirements customers to pay higher rates than would have existed absent this transaction. Our decision to accept the proposed agreement for filing and permit it to go into effect without a hearing simply means that the rates to ACE do not appear excessive. Thus, there is no basis for rejecting DPL's filing under the Federal Power Act. This should not necessarily be construed as a determination that DPL was prudent in arranging this transaction as it relates to cost effects on DPL's other customers.

More precisely, we make no determination here as to whether the rate is too low (whether on the basis of the costs of the particular facility or on the basis of system average or incremental costs); as to whether the rate is so low as to increase the costs of service to retail and wholesale requirements customers over what those costs would have been absent the transaction; or as to whether such an increase in cost, if such there be, is inconsistent with Delmarva's service obligations to its retail or wholesale requirements customers.

Our reading of *FPC* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956), would not preclude these parties, representing DPL's other customers, from challenging the rate for any of the reasons stated in that opinion. However, the burden upon these parties is extremely difficult to satisfy:

> [W]hile it may be that the Commission may not normally impose upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain.... In such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.
>
> *Sierra*, 350 U.S. at 355.

This is not a simple demonstration. Generally speaking, off-system capacity and energy sales have a salutary effect on the costs of serving native loads because they permit more efficient utilization of utility plants and other resources. To satisfy the *Sierra* test PAD and the other protesters would be required to prove, *inter alia*, that DPL was obligated to reserve its lowest cost capacity and energy for customers other than ACE and that the Indian River unit sale actually increases costs of service for these other customers. Regarding the latter requirement, we note that DPL's capacity costs should be significantly reduced by the revenues received from ACE. Moreover, any increase in energy charges to DPL's firm requirements customers resulting from this transaction might well have to be calculated for same periods of time by the difference between the cost of coal that would have been used to generate the 50 MW of capacity of the unit and the purchased cost of economy energy from the PJM pool, rather than by the difference between the cost of coal and increased usage of DPL oil-fired units, as the protesters claim. The protesters would have to show that this energy charge increase more than offsets the demand charge reduction brought about by this unit sale.

This showing would have to involve a comparative analysis of DP&L's system costs with and without the unit sale to ACE. The Commission finds that DP&L's pricing methodology is proper and believes that the sale will not increase overall rates to DPL's firm requirements customers.

PAD, PSC and Old Dominion have made no showing that would warrant a hearing on the issue of whether the rates to be charged ACE are unreasonably low, under the standards of *Sierra*. However, our denial of their request for a hearing shall be without prejudice to their filing of an appropriate complaint.

With the exception of the wage increase adjustment provision discussed above, DPL's rate formulae shall constitute the rates. The Commission shall not require additional filings if DPL charges ACE according to the formula, but shall, of course, require a filing under Section 205 if the formula itself, or any of its components, is changed.

The Commission orders:

(A) Waiver of the Commission's notice requirement under Section 35.11 of the regulations is hereby granted.

(B) Delmarva Power & Light Company's power purchase agreement with the Atlantic City Electric Company is hereby accepted for filing and permitted to go into effect on the day that Indian River Unit No. 4 qualifies as "installed capacity" under the PJM Agreement.

(C) With the exception of the wage increase adjustment provision, DPL's rate formulae shall constitute the rates.

(D) Delmarva Power and Light Company shall be required to file under section 35.13 of the Commission's rules and regulations for any future change in rates under the filed power purchase agreement.

(E) The petitions to intervene, including the late petitions, are hereby granted for good cause shown, subject to the Rules and Regulations of the Commission, *Provided, however,* that participation of such intervenors shall be limited to the matters affecting asserted rights and interests specifically set forth in their petitions to intervene, and *Provided further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order entered in this proceeding.

(F) The intervenors' requests for a hearing on issues relating to the power purchase agreement are hereby denied.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-20729 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3196, 3197, 3198, and 3199]

Eastern Iowa & Power Cooperative; Applications for Preliminary Permit

July 3, 1980.

Take notice that Eastern Iowa Light and Power Cooperative (Applicant) filed on May 30, 1980, four applications for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the projects described below. Correspondence with the Applicant should be directed to: Mr. Earl E. Jarvis, General Manager, Eastern Iowa Light and Power Cooperative, East Fifth and Sycamore, Wilton, Iowa 52778.

Projects Nos. 3196, 3197, 3198, and 3199 would be located at Mississippi River locks and dams Nos. 13, 17, 18, and 16, respectively.

Project Description—The four proposed projects would each utilize an existing U.S. Army Corps of Engineers' lock and dam.

Project No. 3196 would consist of: (1) a new powerhouse constructed along the centerline of the existing non-overflow earth embankment, about 75-feet wide and 900-feet long, containing 35 generating units with a total installed capacity of 17.5 MW; (2) a 69-kV transmission line approximately 11 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 83,000 MWh.

Project No. 3197 would consist of: (1) a new powerhouse, constructed along the centerline of the existing non-overflow earth embankment, about 75-feet wide and 900-feet long, containing 35 generating units with a total installed capacity of 10.5 MW; (2) a 69-kV

transmission line approximately 4 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 43,000 MWH.

Project No. 3198 would consist of: (1) a new powerhouse, constructed along the centerline of the existing non-overflow earth embankment, about 75-feet wide and 900-feet long, containing 35 generating units with a total installed capacity of 14 MW; (2) a 69-kV transmission line approximately 8 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 83,000 MWh.

Project No. 3199 would consist of: (1) a new powerhouse, constructed along the centerline of the existing non-overflow earth embankment, about 75-feet wide and 900-feet long, containing 35 generating units with a total installed capacity of 14 MW; (2) a 69-kV transmission line approximately 2 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average 74,000 MWH.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permits. (A copy of each application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *September 8, 1980*, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows as interested person to file the competing application no later than *October 23, 1980*. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about these applications should file a petiton to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before *September 8, 1980*. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20714 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-421]

Eastern Shore Natural Gas Co.; Application

July 3, 1980.

Take notice that on June 20, 1980, Eastern Shore Natural Gas Company (Applicant), P.O. Box 615, Dover, Delaware 19901, filed in Docket No. CP80-421 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing with the date of the requested order and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of its request for this budget-type authority is to augment its ability to act with reasonable dispatch in making miscellaneous rearrangements of its facilities which would not result in any material change in the transportation and sales service currently rendered by Applicant.

The total cost of the proposed facilities would not exceed $100,000 which cost would be financed from Applicant's cash on hand, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 25, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, purusant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20715 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3076]

Fayetteville, N.C., City of, Public Works Commission; Application for Preliminary Permit

July 3, 1980.

Take notice that City of Fayetteville, North Carolina, Public Works Commission (Applicant) filed on March 7, 1980, an application for preliminary

permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3076 to be known as Hope Mills Lake No. 2 located on the Big Rockfish Creek in Cumberland County, North Carolina.
Correspondence with the Applicant should be directed to: Mr. R. A. Meunch, Jr., Manager, City of Fayetteville, Public Works Commission, 508 Person Street (P.O. Drawer 1089), Fayetteville, North Carolina 28302.

Project Description—The proposed project would consist of: (1) an existing dam, 400-foot long and 21-foot high; (2) a powerhouse with one hydroelectric generating unit with an estimated installed capacity of 5,000 kW; (3) an existing reservoir with a surface area of approximately 89 acres; (4) a transmission line approximately 0.4 mile long connecting to the Public Works Commission's Distribution System; and (5) appurtenant facilities.

Purpose of Project—Project energy would be utilized in meeting power requirements of the residents of the City of Fayetteville, North Carolina.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would prepare a definitive report concerning engineering and economic feasibility of rehabilitating the existing project structures and prepare an environmental report. Applicant estimates the cost of studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 13, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than October 13, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before August 13, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20708 Filed 7-10-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3077]

Fayetteville, NC, City of, Public Works Commission; Application for Preliminary Permit

July 3, 1980.

Take notice that City of Fayetteville, North Carolina, Public Works Commission (Applicant) filed on March 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3077 to be known as Hope Mills Lake No. 1 located on the Little Rockfish Creek in Cumberland County, North Carolina.
Correspondence with the Applicant should be directed to: Mr. R. A. Muench, Jr., Manager, City of Fayetteville, Public Works Commission, 508 Person Street, (P.O. Drawer 1089), Fayetteville, North Carolina 28302.

Project Description—The proposed project would consist of: (1) an existing dam 400-feet long and 27-feet high; (2) one outdoor hydroelectric generating unit with an estimated capacity of 4,000 kW; (3) an existing reservoir with a surface area of approximately 60 acres; (4) a transmission line approximately 1.1 miles long connecting to the Public Works Commission's distribution system; and (5) appurtenant facilities.

Purpose of Project—Project energy would be utilized in meeting power requirements of the residents of the City of Fayetteville, North Carolina.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would prepare a definitive report concerning engineering and economic feasibility of rehabilitating the existing project structures and prepare an environmental report. Applicant estimates the cost of studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 13, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than

October 13, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended,* 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. any comments, protest, or peitition to intervene must be filed on or before August 13, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20709 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-34]

Gateway Texaco; Filing of Petition for Review

July 3, 1980

Take notice that Gateway Texaco on May 6, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before July 17, 1980, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Such petition must also be served on the parties of record in this proceeding and the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 5142, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20716 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EL80-22]

General Public Utilities Corp.; Order Establishing Hearing Procedures and Denying Motion for Interim Relief

July 2, 1980

On March 21, 1980, the General Public Utilities Corporation (GPU) filed a complaint and request for investigation under Section 206(a) of the Federal Power Act. GPU sought an investigation of the provision of the Pennsylvania-New Jersey-Maryland Interconnection Agreement (PJM Agreement) which specifies a "split-savings" pricing formula for sales of energy by other PJM participants to the three operating subsidiaries of GPU. The GPU operating companies must purchase such energy to replace the energy that would have been provided by the jointly-owned Three Mile Island nuclear generating station (TMI) which will be out of service for a considerable period of time.[1]

GPU alleged that the split-savings provision in the PJM Agreement, as it applies to the energy purchased to replace energy that would have come from TMI, results in revenues substantially in excess of sellers' costs. GPU requested that the Commission order that the sales of such replacement energy to the GPU operating companies be made at a price equal to the seller's incremental production cost plus any other costs reasonably allocable to supplying such service.

GPU filed simultaneously with its complaint a motion requesting that the Commission issue an interim order adopting GPU's proposed energy pricing formula until a final order is issued or the Number One unit of TMI resumes the generation of electricity on a continuing basis. GPU also requested in its motion that the Commission grant this interim relief in the order initiating the proceeding or that, in the event the Commission does not do this, the Commission phase the proceeding in order that immediate attention be focused upon whether an interim order granting the relief described above should issue.

On May 2, 1980, the Commission ordered a conference of all parties for the purpose of reviewing with senior Commission advisory staff, presiding at the conference, the issues involved in the docket and the prospects for settlement. The Staff reported back on May 14, 1980 that the conference did not result in a settlement agreement. It is therefore necessary to order further proceedings in this docket.

Discussion

It is apparent from the pleadings in this case that there are numerous disputed issues of material fact among the parties. It appears that the split savings provision in the PJM Agreement may result in unjust and unreasonable prices for replacement energy being purchased by the GPU operating companies under the PJM Agreement, given the extended outage of the TMI plant. We shall therefore order an investigation and hearing on the question of the reasonableness of the split savings provision of the PJM Agreement as it applies to purchases of replacement energy by the GPU operating companies while the TMI units are out of service. However, we do not believe that this investigation and hearing should be limited to the question of pool energy pricing alone. The pricing structure of a power pool agreement is the result of an economic balance of both capacity and energy cost factors whose reasonableness can only be determined by a comprehensive review.

Some of the petitions to intervene have proposed that the Commission order a broader investigation than that sought by GPU. GPU has requested an expedited proceeding. If we were to expand the scope of this investigation beyond the specific circumstances of GPU's complaint, it would be unlikely that the proceedings could be concluded in time to afford GPU any meaningful relief that may be found warranted. Therefore, we shall decline to broaden the inquiry in this complaint proceeding.

GPU's request for interim relief must be denied. The PJM Agreement is a rate schedule that has previously been accepted for filing and allowed to go into effect without suspension. The Commission's power to require that such a rate schedule be amended, absent a filing by the parties to the PJM Agreement under Section 205 of the Federal Power Act, comes from Section

[1] Notice of GPU's complaint and motion for interim relief was issued on March 31, 1980, with responses due on or before April 30, 1980.

206 of the Act and is only prospective in nature.

Because of the numerous material issues of fact that exist among the parties, it would be inappropriate for the Commission to act before allowing the parties an opportunity to make a record on these factual issues. In view of the economic balances in a power pool agreement, noted previously, it would also be inappropriate to phase the proceeding as requested by GPU.

The investigation is to encompass the reasonableness of split-savings pricing as it relates to TMI replacement power, including the interrelationship of other pool pricing or cost factors as may bear upon the reasonableness of such intrapool economy pricing. In view of the extent to which GPU has been relying on pool economy purchases, we shall also order an expedited proceeding.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, specifically Section 206, and by the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter 1), a public evidentiary hearing shall be held to determine whether the PJM Agreement is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful as it relates to sales of energy by PJM members to GPU subsidiary companies to replace energy that would have been supplied by TMI.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing discovery conference in this proceeding to be held within 10 days of the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. This conference shall be for the purpose of expediting discovery and resolving any initial controversies relating to data requests and discovery. The presiding judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(C) GPU's motion for issuance of interim order is hereby denied.

(D) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20731 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3187]

Harrison Western Corp.; Application for Preliminary Permit

July 2, 1980.

Take notice that Harrison Western Corporation (Applicant) filed on May 27, 1980, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3187 to be known as the Granby Project located on the Colorado River near the town of Granby, Grand County, Colorado, at the existing Grandby Dam owned by the United States Water and Power Resources Service (Township 2 North, Range 76 West N.M.P.M.). Correspondence with the Applicant should be directed to: Mr. Warren Harrison, Engineering Manager, Harrison Western Corporation, 1206 Quail Street, Lakewood, Colorado 80215.

Project Description—The proposed project would utilize an existing government dam and would consist of a powerhouse with four Ossberger turbines connected to four generators with a total rated capacity of 2,300 kW. A transmission line with a minimum length of 12,000 feet would be required. The project could generate up to 17,400,000 kWh annually, which would save the equivalent of 28,000 barrels of oil or 8,000 tons of coal.

Purpose of Project—Power generated by the project would be sold to either the Rural Electric Associate or Public Service Company of Colorado.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before September 2, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than November 3, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene

in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before September 2, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20732 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-492]

Idaho Power Co.; Filing

July 2, 1980.

The filing Company submits the following:

Take notice that Idaho Power Company on June 27, 1980, tendered for filing a proposed increase in rates in this contract for sales of electric power and energy to C P National's Oregon Division, as filed with the Commission and designated as Idaho's Rate Schedule FPC No. 57 and to C P National's Nevada District, as filed with the Commission and designated as Idaho's Rate Schedule No. 30. The proposed changes, requested to become effective on September 1, 1980, would increase revenues from jurisdictional sales and service by approximately $5,288,218 from C P National—Oregon and by $678,917 from C P National—Nevada, based on the 12-month period ending December 31, 1980.

The Company states that the proposed increase in rates is required to offset the effect of increased operating expenses, capital costs and plant additions.

Copies of the filing were served upon C P National, the Public Utility Commissioner of Oregon, the Idaho Public Utilities Commission and the Nevada Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20743 filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-493]

Interstate Power Co.; Proposed Tariff Change

July 2, 1980.

The filing Company submits the following:

Take notice that on June 27, 1980, Interstate Power Company (Interstate) tendered for filing a Stipulation and a Transmission Utilization Agreement, both dated June 2, 1980, between Cooperative Power Association (CPA) and Interstate. The new Transmission Utilization Agreement was necessitated by the cancellation of a previous agreement effective as of August 15, 1980 (Rate Schedule F.P.C. No. 88). The new agreement would increase revenues by $311,432 based on the 12 month billing period ending August, 1980.

Interstate states that the reason for the change is to provide continuity of service and to offset a decline in overall rate of return due to increased costs of operation.

Interstate proposes an effective date of August 16, 1980, and states that filing information was served upon CPA.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 GFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20733 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-15]

Michigan Wisconsin Pipe Line Co.; Further Notice of Third-Party Protests [1]

July 3, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] the Staff of the Commission on February 1, 1980 and April 11, 1980, protested the assertion by the Michigan-Wisconsin Pipe Line Company (Mich-Wisc) and certain producers that the contracts identified in Staff's protest constitute contractual authority for the producers to charge and collect any applicable maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).

Staff stated that the contracts identified in Appendix A of this notice do not constitute the contractual authorization for the producers to increase prices to the extent claimed by Mich-Wisc in its evidentiary submission.

(On December 27, 1979, January 7 and 15, 1980, and February 11, 1980, Mich-Wisc supplemented its evidentiary submission. Staff's protests to the contracts listed in Appendix A to this notice are allegedly a result of these supplements by Mich-Wisc. Staff previously protested certain contracts listed in Mich-Wisc's original evidentiary submission. See "Commission Staff Protest of Alleged Contractual Authority to Charge NGPA Rates," filed in this docket by Staff on December 21, 1979. These earlier protests were listed in Appendix A of the "Notice of Third-Party Protests," issued by the Commission in this docket on February 1, 1980.)

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to these protests should file with the Commission, on or before July 21, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR

[1] The term "third-party protest" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

Appendix A.—*Rate Schedule Number or Contract Date—Michigan and Wisconsin*

Producer	Date	Sequence No.
Gulf Oil Corporation	5	405
Samson Resource Co	9/20/78	1,069
Diamond Production Co	2/22/78	360
Atlantic Richfield Co	712	131
Tenneco Oil Co	401	141
Conoco, Inc	439	322
Helmrich & Payne, Inc	40	561
Mid-Continent Energy Corp	8/4/78	825
Phillips Petroleum Corp	7/13/78	999
Amoco Production Co	792	71
Petroleum International, Inc	5/1/79	1,349
Tema Oil Company	412	150
Tema Oil Company	195	141
Shell Oil Company	314	1,084
Tema Oil Company	378	147
Phillips Petroleum Co	8/29/78	1,000
C & K Petroleum, Inc	9/19/78	211

[FR Doc. 80-20717 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

Michigan Wisconsin Pipe Line Co.; Pipeline Rates: Louisiana First Use Tax

July 3, 1980.

In the matter of Michigan Wisconsin Pipe Line Company (Docket No. RP79-43), Natural Gas Pipeline Company of America (Docket No. RP79-38), Northern Natural Gas Company (Docket No. RP79-41), Panhandle Eastern Pipe Line Company (Docket No. RP79-34), Sea Robin Pipeline Company (Docket No. RP79-45), Southern Natural Gas Company (Docket No. RP79-48), Tennessee Gas Pipeline (Docket No. RP79-52), Texas Eastern Transmission Corporation (Docket No. RP79-40), Texas Gas Transportation Corporation (Docket No. RP79-31), Trunkline Gas Company (Docket No. RP79-33), Transcontinental Gas Pipe Line Corporation (Docket No. RP79-46), United Gas Pipe Line Company (Docket No. RP79-44).

Order Denying Rehearing

Applications for rehearing of the Commission's March 30 order in *Arkansas Lousisana Gas Company, et al.*, Docket Nos. RP79-53 *et al.*[1] have been filed by twelve pipelines.[2] In Order No. 10-C,[3] issued on April 24, 1980, the Commission addressed the issues raised in the applications for rehearing, which are the subject of the instant order. The Commission therefore denies the applications for rehearing except as provided in Order No. 10-C.

The Commission Orders:

The applications for rehearing of the March 30 order are denied except as provided in Order No. 10-C.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20718 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[1] *Arkansas Lousiana Gas Co., et al.*, Docket Nos. RP79-53, RP79-54, *et al.*, "Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets and Rejecting Certain Other Tariff Sheets Which Reflect the Louisiana First Use Tax in Pipeline Rates Pursuant to Order Nos. 10, 10-A, and 10-B" (March 30, 1979), 44 Fed. Reg. 21330 (April 10, 1979) (hereinafter "March 30 Order").

[2] Michigan Wisconsin Pipe Line Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Trunkline Gas Company, Transcontinental Gas Pipe Line Corporation, United Gas Pipe Line Company, and Texas Eastern Transmission Corporation.

[3] Order No. 10-C, *State of Louisiana First Use Tax in Pipeline Rate Cases*, Docket No. RM78-23, "Order Modifying Prior Orders and Amending Regulations" (April 24, 1980), 45 Fed. Reg. 29011 (May 1, 1980).

[Docket No. ER80-491]

New York Power Pool; Filing

July 2, 1980.

The filing Company submits the following:

Take notice that on June 27, 1980, the New York Power Pool (NYPP), consisting of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, filed an amendment to the Interconnection Agreement between NYPP and Ontario Hydro ("OH"), dated March 1, 1977. PASNY, the only other member system of NYPP, is not a party to the Agreement or this Amendment.

This proposed Amendment supplements Article VII of the Interconnection Agreement by providing that, in case of war or other emergency as provided in Section 202 of the Federal Power Act, as amended, the Agreement is terminable upon order of the Department of Energy. The Amendment also modified and supplements Article X of the Interconnection Agreement by providing that each party shall maintain billing records for at least 90 days subsequent to each transaction.

The proposed Amendment expands the present provisions for economy energy transactions between OH and NYPP to allow for inclusion of remote systems not signatories to the Interconnection Agreement. The proposed arrangements are intended to facilitate the supply of customer load with the most economical generation available.

The proposed Amendment increases the demand charges for daily capacity power and Short-Term Power. The Amendment increases the charge for use of Transmission facilities for Short-Term Power reserved from a third party external to the Interconnection Agreement. The Amendment also slightly decreases the hourly demand charge for the use of generation facilities for the purchase of Off-Peak energy.

NYPP requests waiver of the Commission's notice requirements to allow for an effective date of July 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20736 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-423]

Panhandle Eastern Pipe Line Co.; Application

July 3, 1980.

Take notice that on June 23, 1980, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP80-423 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional compression facilities on its pipeline system in Carson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes herein to construct and operate facilities for an additional 2,190 compressor

horsepower at its existing Armour Compressor Station, located in Carson County, Texas. Applicant asserts that these additional compression facilities are required to attach newly discovered supplies of natural gas to its pipeline system to supplement declining traditional supply sources in order to assist Applicant in delivering contractually committed volumes of natural gas to its main line system.

The total cost of the proposed facilities is estimated to be $2,387,000 which cost would be financed with funds on hand, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20719 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-405]

Panhandle Eastern Pipe Line Co.; Application

July 3, 1980.

Take notice that on June 18, 1980, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP80-405 an application for a disclaimer of jurisdiction, or alternatively, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued sale and delivery of natural gas to 5 small distributors in the gas supply portion of Applicant's system in Texas and Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to continue to sell and deliver natural gas to the following distributors:

(1) Hi-Plains Utility, Inc., serving the City of Gruver, Texas, contract demand of 1,700 Mcf per day.

(2) Morse Utility Company, serving the Town of Morse, Texas, contract demand of 300 Mcf per day.

(3) City of Stinnett, Texas, contract demand of 1,000 Mcf per day.

(4) Town of Hardesty, Oklahoma, contract demand of 1,000 Mcf per day.

(5) Seiling Public Works Authority of Oklahoma, contract demand of 1,000 Mcf per day.

Applicant states that the initiation of deliveries to these distributors was premised upon their intrastate character, the statutory gathering exemption, and the consumption within the state of production condition. Applicant also states that in the case of Gruver, Texas, the commencement of deliveries predated passage of the Natural Gas Act. Because of subsequent changes in the source of supply feeding Applicant's facilities in Oklahoma, as well as evolving legal developments, Applicant presents these matters to the Commission for disposition, either by disclaimer of jurisdiction or authorizing continuation of the sales.

Applicant states that in the case of Stinnet, Morse, and Gruver, Texas, all of the gas delivered to the distributors is produced and gathered within Texas, and there is no commingling of gas from other states prior to such deliveries. Applicant notes that the gas for the distribution systems is drawn, however, from lines which are transporting gas in interstate commerce, and for which certificates of public convenience and necessity have been obtained from the Commission. Applicant states that in the case of Seiling, Oklahoma, although the distribution system is located in a production and gathering area adjacent to local supplies entering Applicant's system, it is presently supplied by commingled streams of Texas and Oklahoma gas. It is stated that in the case of Hardesty, Oklahoma, all of the gas delivered to the distributor is produced and gathered within Oklahoma, also within the area of production.

Applicant states that the 5 distribution systems supply residential and commercial customers which require continuity of service. Applicant states that there would be no additional service area or commitment, and no additional gas supply requirement. It is stated that service would be provided for these distributors under Applicant's Rate Schedule SG-3.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20720 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-404]

Panhandle Eastern Pipeline Co. and Trunkline Gas Co.; Application

July 3, 1980.

Take notice that on June 19, 1980, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP80-404 a joint application pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 and Section 284.107(a) of the Commission's Regulations for authorization to transport natural gas for the system supply of Central Illinois Light Company (CILCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to transport gas on behalf of CILCO, an existing customer of both Panhandle and Trunkline, because CILCO desires to transfer some of the supply available from Panhandle for resale in communities served by Trunkline. Accordingly, Applicants state that they have entered into a transportation and exchange contract with CILCO dated May 6, 1980, and amended June 6, 1980.

Applicants assert that they have agreed to transport for CILCO a maximum daily quantity of 1,000 Mcf for a period of 10 years and continuing year to year thereafter. It is stated that CILCO would deliver gas to Panhandle by displacement at an existing point of interconnection between CILCO's and Panhandle's facilities near Peoria, Illinois. Then, it is stated, Panhandle would transport and deliver the gas to Trunkline at a point of interconnection between their two systems. Applicants state that Trunkline would redeliver the volumes to CILCO at either (1) Arcola, Douglas County, Illinois, (2) Sidney, Champaign County, Illinois, or (3) St. Joseph, Champaign County, Illinois. Applicants further contend that the transportation service is conditioned upon the availability of capacity to provide the service without detriment to Applicants' existing customers.

Applicants state the CILCO has agreed to pay Panhandle 3.29 cents per Mcf for the gas delivered to CILCO by Trunkline. It is maintained that Panhandle would then pay Trunkline 1.0 cent per Mcf for its share of the transportation service from amounts paid by CILCO.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20721 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 1005]

Public Service Co. of Colorado; Application for a New Major License

July 2, 1980.

Take notice that the Public Service Company of Colorado (Applicant) filed on November 16, 1978, and supplemented on May 23, 1979, and application for a new major license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the constructed Boulder Canyon Hydroelectirc Project, FERC No. 1005, located on the Middle Boulder Creek, in Boulder County, Colorado, near the Town of Nederland, Colorado and the City of Boulder, Colorado. The project affects lands of the United States, within the Roosevelt National Forest. The original license for Project No. 1005 expired on August 14, 1979.

Correspondence concerning the application should be directed to: Public Service Company of Colorado, Attention: Mr. C. K. Millen, Senior Vice President, P.O. Box 840, Denver, Colorado 80201, with copies to Kelly, Stansfield & O'Donnell, Attention: Mr. James R. McCotter, Esq., 550-15th St., Denver, Colorado 80202.

Project Description—The run-of-the-river Boulder Canyon Hydroelectric Project consists of: (1) a concrete gravity dam about 720 feet long having a maximum height of 175 feet, including a spillway about 127 feet long with a crest elevation of 8181.5 feet m.s.l., creating the Barker Meadow Reservoir which has a surface area of 200 areas and a gross storage capacity of 11,687 acre-feet at normal pool elevation 8180 feet m.s.l.; (2) an outlet gate control structure; (3) a 5 foot by 5 foot concrete tunnel, about 225 feet long and connecting by way of a valve house to an 11.7-mile-long, 36-inch diameter concrete gravity pipeline; (4) the Kossler Reservoir, a reregulating reservoir having a surface area of 12.25 acres and a gross storage capacity of 165 acre-feet at maximum pool elevation 7717.6 feet m.s.l. and formed by three earth embankment structures; (a) Southwest dam, an earth-concrete core structure about 450 feet long and about 18 feet high; (b) Northeast dam, an earth embankment structure about 20 feet high and 180 feet long; and (c) West dam, an earth embankment structure 420 feet long, having a maximum height of about 5 feet; (5) a concrete outlet structure with trash screens and a gate connecting to a 9,340-foot-long steel penstock varying in diameter from 56 to 44 inches; (6) a powerhouse containing two generating units having an installed rated capacity of 20,000 kW; (7) a 13-kV generator bus and two 13/115-kV step-up transformers; and Project No. 1005 (8) appurtenant facililties.

Recreational facilities existing at the Boulder Canyon Hydroelectric Project include fishing accesses, picnic grounds, hiking trails, and sanitary facilities. The Applicant proposes to develop similar, additional facilities.

Purpose of the Project—All power generated by the project is and will continue to be incorporated into the Applicant's transmission distribution network for use within its service area.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *September 1, 1980* either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than *December 30, 1980.* A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended,* 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest

may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest of comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be filed on or before September 1, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20737 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-376]

Public Service Co. of New Mexico; Order Accepting Rate for Filing, Denying Request for Waiver, Establishing Hearing Procedures and Consolidating Proceedings

July 3, 1980.

On May 8, 1980, Public Service Company of New Mexico (PNM) submitted for filing a rate schedule with the City of Los Angeles, Department of Water and Power (Los Angeles).[1] PNM has agreed to sell Los Angeles a total of 700,000 Mwh for the period January 17, 1980, through April 30, 1982. For this service, PNM proposes that the rate be set at the sum of (1) a demand charge of 26.5 mills/Kwh and (2) an energy charge per Kwh equal to the sum of Account 501 (fuel expense), non-fuel operation and maintenance (O&M) expense, other taxes, and allocable administrative and general (A&G) expenses. PNM requests that our notice requirements be waived pursuant to 18 CFR 35.11 and that the filing be made effective as of January 17, 1980.[2]

Notice of PNM's filing was duly issued on May 20, 1980[3] with responses due on or before June 10, 1980. No petitions to intervene have been filed.

Discussion

As noted above, PNM's proposed rate is equal to a demand charge of 26.5 mills/Kwh plus an energy charge. Our analysis indicates that the components of the energy charge are appropriate. However, we are unable to make the same statement concerning the components of the demand charge. PNM indicates that the demand charge is intended to recover depreciation, income and ad valorem taxes, and an overall rate of return of 12.272%. We find that the depreciation and tax components of PNM's demand charge are appropriate. However, the rate of return is predicated on an equity return of 19.23%, with a capital structure comprised of 35.5% common equity. Given this initial review of PNM's proposed rate, we find that this rate may unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

In Docket No. ER80-313, PNM also requested an overall rate of return of 12.272%. *See* order issued May 30, 1980. We note that the sale to Los Angeles is a cost item in PNM's cost of service data in Docket No. ER80-313. Because of these interrelationships, we will exercise our discretion and order that this proceeding be consolidated with Docket No. ER80-313.

Pursuant to Section 206 of the Federal Power Act, we will order an investigation of this rate. Furthermore, since these rates may be unjust and unreasonable, we do not believe that it would be in the public interest to waive prior notice requirements of § 35.3 of our Regulations under Section 205(c) of the Federal Power Act. Accordingly, PNM's request that the notice requirements be waived shall be denied. This denial is without prejudice, however, to a request for reconsideration of a waiver to permit the rate to become effective on January 17, 1980, if the Company agrees to collect the proposed rate subject to refund.

The Commission orders:

(A) The Firm Surplus Energy Agreement between PNM and Los Angeles is accepted for filing as an initial rate.

(B) PNM's request that the notice requirements of 18 CFR 35.3 be waived is denied. Accordingly, Rate Schedule F.E.R.C. No. 40 shall not become effective until July 7, 1980. However, this does not prejudice PNM's right to request an effective date of January 17, 1980 if it agrees to collect the proposed rate subject to refund.

(C) Pursuant to the authority contained in section 206 of the Federal Power Act, we will order an investigation of this matter.

(D) This proceeding shall be consolidated with that of Docket No. ER80-313.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20722 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3190]

Santa Clara, California, City of; Application for Preliminary Permit

July 3, 1980.

Take notice that the City of Santa Clara (Applicant) filed on May 27, 1980, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3190 to be known as the Black Butte Water Power Project located at the Corps of Engineers' (Corps) Black Butte Dam on Stoney Creek in the County of Tehama, California. The project would utilize a Corps of Engineers dam and waters released for irrigation and other purposes from the Corps' Black Butte Reservoir. Correspondence with the Applicant should be directed to: Mr. D. R. Von Raesfeld, City Manager, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.

Project Description—The proposed project would consist of: a penstock approximately 750 feet long, a powerhouse containing a single generating unit with a rated capacity of 5,000 kW, a 1,000-foot long transmission line connecting the powerhouse to the existing Pacific Gas and Electric Company's (PG&E) 12-kV powerline south of the powerhouse, and apurtenant facilities.

Purpose of Project—Project energy would be used to serve the Applicant's electric service area.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and

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[1] The agreement between PNM and Los Angeles is dated January 17, 1980, and service was to begin on that date. However, as noted, PNM did not file the agreement until May 8, 1980. This is in violation of 18 CFR § 35.3(a) (1979), which states that an initial filing is to be tendered "not less than sixty days, nor more than one hundred twenty days *prior* to the date upon which the electric service is to commence. . . ". We also note, that in its filing, PNM offered no explanation for its failure to file a time application.

[2] Designated as *Public Service Company of New Mexico*, Rate Schedule F.E.R.C. No. 40.

[3] 45 FR 35871 (1980).

preparing designs is estimated by the Applicant to be $300,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commision are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before August 13, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than October 13, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before August 13, 1980. the Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20710 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3193]

Santa Clara, California, City of; Application for Preliminary Permit

July 3, 1980.

Take notice that the City of Santa Clara (Applicant) filed on May 29, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3193 to be known as the Stony Gorge Water Power Project located at the U.S. Water and Power Resources Service's (WPRS) Stony Gorge Dam on the Stony Creek in the County of Glenn, California. The project would utilize a WPRS's dam and waters released from its Stony Gorge Reservoir for irrigation and other purposes. Correspondence with the Applicant should be directed to: Mr. D. R. Von Raesfeld, City Manager, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.

Project Description—The proposed project would consist of: a penstock approximately 140 feet long, a powerhouse containing a single generating unit with a rated capacity of 6,000 kW, a one mile long transmission line connecting the powerhouse to the existing Pacific Gas and Electric Company's (PG&E) substation north of the powerhouse, and appurtenant facilities.

Purpose of Project—Project energy would be used to serve the Applicant's electric service area.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with WPRS and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $250,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Any one desiring to file a competing application must submit to the Commission, on or before August 13, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than October 13, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or

petition to intervene must be filed on or before August 13, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20711 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EL78-23]

Sierra Pacific Power Co. v. Utah Power & Light Co.; Order Granting in Part and Denying in Part Petition for Declaratory Order

July 3, 1980.

Sierra Pacific Power Company (Sierra Pacific) has requested this Commission to issue a declaratory order [1] determining its right to receive electric power and energy under the terms of its agreements with Utah Power and Light Company (Utah P&L). Specifically the petitioner requests a declaration that: (1) the sales for resale by Utah P&L to the petitioner and the rates contained in an agreement between the parties dated August 10, 1972, and formalized in a document dated September 12, 1977, are subject to the Commission's exclusive jurisdiction under the Federal Power Act, (2) an order of the Utah Public Service Commission purporting to assert and exercise jurisdiction over the sales and rates under the Amendatory Agreement is an unlawful interference with this Commission's exclusive jurisdiction and is to be disregarded by Utah P&L, and (3) Utah P&L is required to comply with the terms of its agreement with the Petitioner, the requirements of the Federal Power Act and the Commission's applicable rules and regulations.

Background

Utah P&L and Sierra Pacific are interconnected pursuant to an interconnection agreement between them dated May 19, 1971. That contract also provides for the sale of 50 MW of firm power and energy for resale in interstate commerce from Utah P&L to Sierra Pacific.

The contract, designated Utah P&L Rate Schedule FPC No. 108 and Sierra Pacific Rate Schedule FPC No. 10, was accepted by letter order issued August 10, 1972. In that order the parties were advised that initiation of service under the contract would constitute a rate schedule change which would require filing with the Commission.[2] On March 8, 1974, in Docket No. E-8656, Utah P&L tendered for filing a service schedule to provide for service to Sierra Pacific. The Commission accepted Utah P&L's service agreement for filing by letter order issued Febrary 11, 1975.

Subsequently, the utilities amended the agreement to (1) provide a second point of interconnection, (2) increase the firm power transferred under the terms, conditions and rates set forth in the agreement and (3) extend the term of the interconnection agreement to 45 years from the in service date of the second interconnection. The rates and charges for the power and energy sold under this agreement are determined under Utah's filed RS-3 rate schedule. The term of the sale of increased power and energy is 10 years from October 1, 1977 and continues thereafter on an annual basis. Termination is effected by the giving of at least five-years notice.

On September 13, 1977, Utah P&L submitted for filing its amended agreement and revised tariff sheets. No comments, protests or requests for intervention were received in response to the notice. By letter order issued November 2, 1977 in Docket No. ER77-587 the Commission accepted the revised tariff and agreement for filing.

Prior to filing, Utah P&L notified Sierra Pacific of its intention to secure approval of the contract from the Utah Public Service Commission (UPSC or State Commission) pursuant to that Commission's order issued August 12, 1974.[3] Utah P&L asserted that it would not be bound by the contract if the UPSC failed to give its approval. Sierra Pacific protested.

The State Commission conducted a hearing[4] and held that it has jurisdiction over the generation and transmission facilities in Utah P&L, and that these facilities would be utilized to supply the energy to be sold to Sierra Pacific. Therefore, the UPSC reasoned that it has jurisdiction over the contract for the sale for resale of electricity to Sierra Pacific. The UPSC recognized federal jurisdiction over the rate to be paid for this wholesale sale of electricity in interstate commerce. However, it determined that the federally approved RS-3 rate based on embedded cost of service plus a fuel cost adjustment was not in the best interest of customers served by Utah Power and Light within the state of Utah.[5]

The State Commission concluded and ordered that no service be supplied by Utah P&L to Sierra Pacific after December 31, 1984, unless the agreement is modified and approved by the UPSC.[6]

Utah P&L takes the position that the UPSC order merely affects the services to be provided under the parties' agreement and does not directly affect the rate at which the sale is to be made. Therefore, Utah P&L will accept and abide by the State Commission's order as long as it remains in effect.

Procedural History:

On May 12, 1978, Sierra Pacific filed its petition for a declaratory order with this Commission. Notice of the filing was issued May 24, 1978 with responses due by June 14, 1978. The Utah and Nevada Public Service Commissions filed notices of intervention on June 14, 1978. On that same date Utah P&L, the State of Utah and the Division of Public utilities of the Department of Business Regulation of the State of Utah and the Committee of Consumer Services of the State of Utah filed petitions to intervene. These interventions shall be granted.

Sierra Pacific, on May 8, 1979, moved for summary issuance of a declaratory

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[1] This request was made pursuant to Section 1.7(c) of the Commission's Regulations.

[2] The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; otherwise, the reference is to the FERC.

[3] In the course of a retail electric rate proceeding entitled *Utah Power and Light*, Case No. 6978, the Utah Public Service Commission stated, "any future contracts for sale of power to any customer or other utility, *either in or out of the State of Utah*, if the applicant intends to use any facilities or allocate a portion of any facilities over which this Commission has jurisdiction, shall not be entered into without the prior written approval of this Commission. (Emphasis added.)

[4] Docketed as Utah Public Service Commission Case No. 77-035-19. The State Commission held a hearing on January 23 and 25, 1978. We note that this is after the FERC acceptance of Utah P&L's filing.

[5] Some additional pertinent findings of the UPSC are:

1. Sierra-Pacific had entered a special appearance contesting the jurisdiction of the Commission over it and the Commission (found) that the Commission has jurisdiction to consider all aspects of the service to be supplied under the agreements submitted for approval.

2. Sierra-Pacific is a public utility supplying electrical service in parts of Nevada and California and does not supply service or have facilities located within the State of Utah.

[6] The UPSC ordered:

1. The Commission has jurisdiction over Utah Power as to its operations in the state of Utah, including jurisdiction over the firm energy and power to be supplied by Utah Power to Sierra-Pacific pursuant to the Resale Electric Service Agreement between said companies, and over the electrical generation and transmission facilities of Utah Power within the State of Utah to be utilized for supplying said service.

2. It is not in the best public interest of the Utah customers of Utah Power that the subject Resale Electric Service Agreement be approved as written. The Commission concludes that same should be conditionally approved subject to the limitation that Utah Power supply firm power and energy thereunder in the amounts set forth in said agreement only until December 31, 1984, and that no service be supplied thereafter unless said Agreement is modified and, as modified, is approved by this Commission (UPSC) and any other regulatory body having jurisdiction.

order in this docket. In support of its motion, Sierra Pacific avers that "there is no apparent issue of fact that requires the institution of hearing procedures."

The State of Utah governmental intervenors[7] responsed with a motion to dismiss and objection to Sierra Pacific's motion for summary disposition. the motion states that ". . . as a matter of law, although this Commission (FERC) has exclusive jurisdiction to set wholesale rates, it otherwise does not have exclusive jurisdiction to determine whether and to what extent a wholesale power contract will be served by generating and other facilities used in local distribution."

Intervenors' Motions

The Utah governmental intervenors are incorrect in their interpretation of the law. Accordingly, their motion to dismiss shall be denied. The intervenors assert that the state commission made no ruling with respect to rates, but only the conditions under which Utah Power would be allowed to honor the contract.[8] These conditions of service are part of the wholesale rate schedule [9] and as such are subject to our exclusive jurisdiction.

The intervenors' objection to Sierra Pacific's motion for summary disposition does not allege any additional relevant facts nor does it raise any issue of material fact. Moreover, it does not indicate how a hearing would enhance the Commission's ability to decide the issue raised in the instant docket.

This Commission may dispose of a controversy on the pleadings without need to resort to an evidentiary hearing when the opposing presentations reveal no issue of material fact. The sole question raised is one of law which tests the validity of the order of the Utah Public Service Commission in light of the Federal Power Act. Such a determination is appropriately made through summary proceedings. See *Municipal Light Boards of Reading and Wakefield Massachusetts* v. *FPC*, 146 U.S. App. D.C. 294, 450 F2d 1341 (1971), *cert. denied*, 405 U.S. 989 (1972); *McCulloch Interstate Gas Company*, Docket No. CP77-1, order issued November 8, 1978. We find no basis for a formal evidentiary hearing on this issue.

Discussion

I. Sierra Pacific requests that we declare that the terms of its amendatory agreement fall under our exclusive jurisdiction.

The amendatory agreement comes under our jurisdiction for two reasons. First, it provides for the transmission of electric energy in interstate commerce and second it concerns the sale of such energy at wholesale in interstate commerce.[10]

The regulation of rates for the sale of electricity in interstate commerce is under the exclusive jurisdiction of the federal government and interference by the states is barred by the Commerce Clause of the Constitution. *Public Utilities Commission of Rhode Island* v. *Attleboro Steam and Electric Company*, 273 U.S. 83 (1926). In *Attleboro*, the Rhode Island Public Utilities Commission attempted to assert jurisdiction over the rates for electric energy sold in interstate commerce. The court held that such a sale in interstate commerce could only be regulated by the exercise of the power vested in Congress.

Congressional passage of Part II of the Federal Power Act (Act) is a direct result of *Attleboro* and the two are to be read together. Congress interpreted that case as prohibiting state control of wholesale rates for electricity transmitted in interstate commerce for resale, and so gave the Federal Power Commission authority to fill this regulatory gap.[11]

The court has prohibited state interference with interstate rates for energy and has affirmed exclusive federal regulatory jurisdiction in this area. In *FPC* v. *Corporation Commission of Oklahoma*, 362 F. Supp 522, (WD Oklahoma, 1973) *aff'd* 415 U.S. 961 (1974), the state commission, dissatisfied with federal regulation, sought to substitute its judgment for that of the FPC. The state prohibited the sale of natural gas at what it deemed to be a wasteful price. The court citing numerous authorities stated that the state commission in effect was establishing a minimum price at which the gas in question could be sold in interstate commerce. Finding that this would circumvent the regulatory jurisdiction of the FPC, the court held that the state has no authority to either directly or indirectly fix the price at which this form of energy subject to federal jurisdiction could be sold in interstate commerce.

The Utah PSC has attempted to collaterally adjudicate the justness and reasonableness of a filed rate and has ordered the termination of service under that rate unless the rate is modified and approved by the State Commission. The State Commission has by its actions crossed over the boundary line between state and federal jurisdiction.[12] Congress through enactment of the Federal Power Act provided for federal regulation beyond the reach of state commission control. It is within the jurisdiction of this Commission to determine the justness and reasonableness of the rate and terms of service between Utah P&L and Sierra Pacific. Jurisdiction to determine the reasonableness of rates charged for wholesale electric power in interstate commerce rests exclusively with this Commission. *Narragansett Electric Company* v. *Burke*, 381 A. 2d 1385 (RI 1977) *cert. den.* 435 U.S. 972 (1978). Any rate change or change in service, including termination of sales for resale of electricity in interstate commerce must comply with the mandates of the Federal Power Act and be filed with this Commission. *See, Pennsylvania Water and Power Company* v. *FPC*, 343 U.S. 414 (1952).

II. Sierra Pacific's second request in effect seeks an injunction against the State Commission's order. We deny this request for lack of jurisdiction. It is not within our jurisdiction to order a utility to directly disregard an order of a state commission. However, here too, the law is clear.

The court in *Corporation Commission of Oklahoma* noted the conflict faced by those torn between complying with a state order and federal regulations. Citing *Florida Lime and Avocado Growers* v. *Paul*, 373 U.S. 132 (1963) and *Northern Natural Gas* v. *State Corporation Commission of Kansas*, 372 U.S. 84, 92 (1963), it held that where such a situation exists, the state orders are preempted by the federal regulations. The courts provide the proper forum for the injunctive relief requested by Sierra Pacific.

III. Sierra Pacific seeks a mandate directing Utah P&L to comply with the terms of the amendatory agreement, the Federal Power Act and this Commission's Rules and Regulations. We shall grant Sierra Pacific's request.

[7] Public Service Commission of the State of Utah, State of Utah and the Division of Public Utilities of the Department of Business Regulation of the State of Utah and the Committee of Consumer Services of the State of Utah.

[8] See Motion to Dismiss filed July 5, 1979, page 2.

[9] Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. Section 205(c) of the Federal Power Act.

[10] In either case, the Commission's jurisdiction over the transaction is conferred by statute, subject to certain provisions. See Section 201 of the Federal Power Act.

[11] *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953).

[12] *FPC* v. *Southern California Edison Company*, 376 U.S. 205, 215 (1964).

Upon acceptance of the amendatory agreement for filing we exercised our jurisdiction over the increased sales between Sierra Pacific and Utah P&L. We have already stated that a change in the firm power service from Utah P&L to Sierra Pacific would constitute a rate schedule change requiring timely filing.[13] Termination falls within the meaning of change as used in the context of filed rate schedules. *See, Pennsylvania Water and Power Company* v. *FPC,* 343 U.S. 414, (1952). Utah P&L became bound to the terms of the agreement, and to this Commission's regulations relating to change of service under filed rates, upon our acceptance of the agreement for filing and its incorporation into Utah P&L's previously filed rate schedule FPC No. 108.

Under the filed rate doctrine, rates filed with this commission are to be treated as legally binding. The rates may only be modified or terminated in a manner provided by the Federal Power Act. They are binding upon the seller who must serve the purchaser in accordance with the approved rate. Challenge to Commission determination of the reasonableness of these rates is limited to timely judicial review; and the determination cannot be collaterally attacked. *See Northwestern Public Service Company* v. *Montana-Dakota Utilities Company,* 181 F. 2d 19 (CA8, 1950) *aff'd* 341 U.S. 246 (1951), *Maine Public Service Commission* v. *FPC,* 579 F. 2d 659 (CA1, 1978).

In *FPC* v. *Sierra Pacific Power Company,*[14] the Supreme Court set the standards under which a determination could be made that a contract rate is unjust and unreasonable. The Court stated:

> [W]hile it may be that the Commission may not normally impose upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain. * * * In such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers excessive burden, or be unduly discriminatory * * * Whether under the facts of this case the contract rate is so low as to have an adverse affect on the public interest is of course a question to be determined in the first instance by the Commission.[15]

While their claim that the contract places a burden on the Utah ratepayers of Utah P&L paraphrases the standard set forth in *Sierra,* the intervenors have failed to request relief under Section 206 of the Federal Power Act. Neither have they made a showing that would warrant a hearing on the issue of whether the RS-3 rate is unreasonably low under the standards of *Sierra.* Our denial of the intervenor's motion shall be without prejudice to their filing of an appropriate complaint for hearing under Section 206.

The State Commission chose to have its own investigation rather than exercise its right to intervene in Docket No. ER77-587. Institution of a state commission proceeding is contrary to the procedure mandated by the Act for modification and termination of filed rate schedules. The UPSC order resulting from this collateral hearing can not be controlling. Federal regulation of sales for resale under the Federal Power Act precludes concurrent state jurisdiction. *Arkansas Power and light* v. *FPC,* 368 F. 2d 376 (CA8, 1966).

Utah P&L can claim no rate or terms of service inconsistent with the filed rate and agreement.[16] Any change in the service must comply with the Commission's regulations. Specifically, if Utah intends to modify its rate or terminate service it must file a change in rate schedule[17] or a notice of termination[18] pursuant to the Commission's regulations and its agreement with Sierra Pacific.

The agreement does not provide for unilateral termination by Utah P&L. The letter agreement of August 10, 1972, incorporated as an exhibit to the September 12, 1977 filed agreement, provides for termination, upon five years written notice, by Sierra Pacific. Utah P&L in drafting the agreement failed to provide a termination provision for itself. Under *Sierra*[19] Utah P&L is contractually precluded from unilaterally filing for a modification (including termination) of its service to Sierra Pacific under Section 205. Its sole recourse would be to request this Commission to institute proceedings under Section 206(a) and demonstrate that the existing contract terms are so unremunerative as to "leave an adverse effect on the public interest." *Cf Delmarva Power and Light Company,* Order Accepting Power Purchase Agreement, Docket No. ER80-225, issued June —, 1980.

We note additionally that termination of service to Sierra Pacific contrary to this Commission's regulations will be a violation of the Federal Power Act subjecting Utah P&L to the enforcement and penalty provisions of the Act.[20]

The Commission Orders

(A) The petitions to intervene are hereby granted pursuant to Section 1.18(a) of the Commission's Regulations, subject to the Rules and Regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further* that admission of these intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(B) The motion to dismiss filed by the State of Utah governmental intervenors is hereby denied without prejudice to their filing a complaint for hearing under Section 206 of the Federal Power Act.

(C) It is hereby ordered that any deviation by Utah Power and Light from the terms of its filed rate schedule, until such time that modification or termination of that rate schedule is granted by this Commission in a manner consistent with its regulations and the Federal Power Act; shall be deemed to be a violation of the Federal Power Act.

(D) Sierra Pacific's petition for declaratory order is hereby granted to the extent the relief requested is granted by this order all other portions of Sierra Pacific's petition for a declaratory order is hereby denied.

(E) The above docket is hereby terminated.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 60-20723 Filed 7-10-60; 8:45 am]

BILLING CODE 6450-85-M

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[13] Letter order accepting Utah P&L FPC Rate Schedule No. 108 for filing, issued August 10, 1972.

[14] 350 U.S. 348 (1956).

[15] *Id.* at 355.

[16] Section 205(c) of the Federal Power Act.

[17] Section 205(d) of the Federal Power Act.

[18] *Id.*

[19] *FPC* v. *Sierra Pacific Power Co.,* 350 U.S. 348 (1956).

[20] Sections 314 and 316 of the Federal Power Act.

[Docket No. CP80-413]

Transcontinental Gas Pipe Line Corp.; Application

July 3, 1980.

Take notice that on June 19, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-413 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas supply

facilities in Live Oak County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate approximately .9 mile of 6-inch pipeline and .1 mile of 4-inch pipeline in order to attach new gas supplies to its system from two wells drilled in the Charlene Field, Live Oak County, Texas.

Applicant estimates the cost of the proposed facilities to be $251,000 which would be financed initially through short-term loans and available cash. Permanent financing, it is asserted, would be undertaken as part of an overall long-term financing program at a later date. Applicant states that no new sales or services is proposed, and construction would not increase the delivery capacity of Applicant's main transmission system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20724 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-411]

Transcontinental Gas Pipe Line Corp.; Application

July 3, 1980.

Take notice that on June 19, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-411 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas supply facilities in McMullen County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate approximately .32 mile of 6-inch pipeline and metering and regulating facilities in order to attach new gas supplies to its system from one well drilled at the Dillworth Field, McMullen County, Texas.

Applicant estimates the cost of the proposed facilities to be $71,300 which would be financed initially through short-term loans and available cash. Permanent financing would be undertaken as part of an overall long-term financing program at a later date, it is stated. Applicant states that no new sale or service is proposed, and construction would not increase the delivery capacity of Applicant's main transmission system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20725 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-412]

Transcontinental Gas Pipe Line Corp.; Application

July 3, 1980

Take notice that on June 19, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-412 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas supply facilities in Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate approximately 1.23 miles of 10-inch pipeline and up to 6 miles of 4-inch to 6-inch pipeline and meter and regulating facilities in order to attach new gas supplies to its system from six to seven wells drilled in the Constitution Field, Jefferson County, Texas.

Applicant estimates the cost of the proposed facilities to be $950,200 which would be financed initially through short-term loans and available cash. It is asserted permanent financing would be undertaken as a part of an overall long-term financing program at a later date. Applicant states that no new sale or service is proposed, and construction would not increase the delivery capacity of Applicant's main transmission system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20726 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-494]

Tucson Electric Power Co.; Filing Tucson-Plains Economy Energy Interchange Agreement

July 2, 1980.

The filing Company submits the following:

Take notice that Tucson Electric Power Company ("Tucson") on June 27, 1980, tendered for filing an Economy Energy Interchange Agreement between Tucson and Plains Electric Generation and Transmission Cooperative, Inc. ("Plains"). The primary purpose of this Agreement is to provide for economy energy interchange transactions between the power systems of the two companies. Tucson states that copies of the filing were served upon Plains.

Any person desiring to be heard or to make any application with reference to said Agreement should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this Agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20738 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. ER80-379 and ER80-380]

Utah Power & Light Co.; Filing

July 2, 1980.

The filing Company submits the following:

Take notice Utah Power & Light Company (Utah Power), on June 23, 1980, tendered for filing a Cancellation Notice requesting permission to cancel (or withdraw) rate filings submitted to FERC on May 9, 1980 in the above dockets.

The filings which are now being withdrawn were embodied in and dependent upon an agreement under which Deseret Generation and Transmission Cooperative (Deseret) was to purchase, by June 1, 1980, a 49% interest in Utah Power's new Hunter II Unit (400 MW) for approximately $114 million. Deseret was unable to timely complete its financing arrangements which required that the transaction be fully consummated prior to the commercial operation date of the Unit. The Unit was declared "Commercial" as of 12:01 a.m. on June 3, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20739 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC80-92]

Valero Interstate Transmission Co., et al.; Complaint

July 2, 1980.

Take notice that on June 12, 1980, Valero Interstate Transmission Company (Vitco), P.O. Box 1569, San Antonio, Texas 78296, filed in Docket No. TC80-92 a complaint pursuant to Section 1.6 of the Commission's Rules of Practice and Procedure (18 CFR 1.6). Vitco requests that the Commission (1) order Transcontinental Gas Pipe Line Corporation (Transco) and Delhi Gas Pipe Line Corporation (Delhi) to show cause why sales of gas under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) by Delhi to Transco should not be suspended or terminated before Transco reduces its purchases of certificated gas from Vitco, (2) order Delhi immediately to suspend its Section 311 sales to Transco pending hearing and to terminate such sales thereafter, (3) order Transco to discontinue receiving Section 311 gas from Delhi, and (4) order Transco not to reduce below contractually required minimum quantities its purchases from Vitco of natural gas sold pursuant to certificates issued under Section 7(c) of the Natural Gas Act so long as Transco purchases Section 311 gas from Delhi. Vitco's allegations and prayer for relief are more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Vitco alleges it sells natural gas to Transco under a producer-type contract and a certificate issued under Section 7(c) of the Natural Gas Act under which Vitco is obligated to sell and deliver and Transco is obligated to purchase certain quantities of dedicated gas. Vitco alleges that under the contract Transco may reduce the contractual daily quantity of gas only if (1) Transco requests in writing that Vitco deliver maximum contract volumes for 90 consecutive days, (2) Vitco fails for 90 consecutive days to deliver to Transco

the minimum daily quantity of gas which Transco is obligated to purchase, and (3) Transco notifies Vitco in writing within 30 days after the expiration of the 90-day period that Transco is reducing the daily contract quantity to the average daily quantity which Vitco delivered during the 90-day period. Upon proper reduction of the daily contract quantity, the daily contract minimum may be adjusted proportionately.

Vitco alleges that Transco (1) reduced the daily contract quantity in violation of the contract and (2) reduced its daily takes below the minimum daily quantity. In particular, Vitco alleges Transco did not properly request Vitco to deliver maximum contract volumes for a 90-day period before establishing new contract quantities.

Vitco avers that Transco is purchasing approximately 40,000 Mcf of natural gas per day from Delhi, an intrastate pipeline, pursuant to Section 311 of the NGPA. Vitco believes these Section 311 sales may involve gas acquired by Delhi solely or primarily for resale to Transco.

Any person desiring to be heard or to make any protests with reference to said complaint should on or before August 1, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20740 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 176]

Vista Irrigation District; Application to Modify Henshaw Dam

July 3, 1980.

Take notice that the Vista Irrigation District (Vista) filed on July 1, 1980, pursuant to Ordering Paragraph (E) of Commission Opinion No. 36, an application for Commission authorization to modify Henshaw Dam located on the San Luis Rey River in San Diego County, California. Correspondence with the Applicant should be directed to: Mr. Robert Wilson, General Manager and Chief Engineer, Vista Irrigation District, 202 West Connecticut Avenue, Vista, California 92083.

Description—Vista seeks immediate authorization to make emergency modifications to Henshaw Dam to improve the structural integrity of the dam and provide increased protection to downstream developments. Modifications would consist of: (1) lowering the spillway crest elevation from 2727.4 feet to 2690.0 feet (m.s.l.); (2) construction of a 1200-foot long spillway discharge channel; and (3) construction of a berm (Flow Retardation Structure) to elevation 2707.0 feet (m.s.l.) downstream of the dam.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protests or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before July 24, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 80-20727 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. G-7516, G-13445, and CI72-760]

Warren Petroleum Co., a Division of Gulf Oil Corp. (Operator); Application

July 2, 1980.

Take notice that on July 1, 1980, Warren Petroleum Company, a Division of Gulf Oil Corporation (Operator) (Applicant), P.O. Box 2100, Houston, Texas 77001, filed an application to amend its pending abandonment application, filed September 29, 1975 in Docket Nos. G-7516 and G-13445, to include authorization to abandon in part the sale to El Paso Natural Gas Company (El Paso) of surplus residue gas attributable to certain production from the Waddell Lease in Crane Country, Texas, authorized by certificate issued in Docket No. CI72-760 and covered by Applicant's FERC Gas Rate Schedule No. 66, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its pending 1975 application, Applicant states that part of the residue gas sold to El Paso after processing in the Waddell Plant was produced by Gulf Oil Corporation (Gulf) from the Waddell Lease and that the portion attributable to gas formerly owned by Gulf under the Waddell Lease has, since July 14, 1975, been owned by the reversionary mineral owners. Therefore, it is said, to the extent that such residue gas is attributable to the interests of the reversionary mineral owners in the Waddell Lease it is no longer available to Applicant for sale to El Paso. Amendment of the 1975 application is requested based on a further review of Warren's records. Warren states that such review indicates that residue gas attributable to a portion of the production from Gulf's Waddell Lease may have also been sold to El Paso under the certificate of public convenience and necessity which was issued to Warren in Docket No. CI72-760 and Warren's FERC Gas Rate Schedule No. 66.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without futher notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the

proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20741 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-489]

West Texas Utilities Co.; Proposed Rate Schedule Changes

July 2, 1980.

The filing Company submits the following:

Take notice that West Texas Utilities Company (WTU) on June 26, 1980, tendered for filing Supplement No. 1 to its FERC Rate Schedule No. 40, relating to the provision of wholesale electric service to the City of Coleman, Texas, and Supplement No. 3 to its FERC Rate Schedule No. 42, relating to the provision of wholesale electric service to the City of Brady, Texas.

The filed supplements to Rate Schedule Nos. 40 and 42 provide, in effect, that during the off-peak hours of 9 p.m. to 9 a.m. weekdays, and around the clock on weekends, legal holidays and from September 16 to June 14, inclusive, the respective Cities may take capacity up to the limit of the facilities installed to serve them without affecting the additional capacity commitment.

WTU also states that a copy of the complete filing was served on the City of Coleman, Texas, and the City of Brady, Texas, and on the Public Utility Commission of Texas.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-20742 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Week of June 16 through June 20, 1980

During the week of June 16 through June 20, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

July 7, 1980.

Proposed Decisions and Orders

Applied energy technology, Los Gatos, Calif., BEE-0779, gasohol.

Applied Energy Technology (Aetco) filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Aetco to purchase increased volumes of unleaded motor gasoline pursuant to its base period allocation for the purpose of blending gasohol. On June 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Atlanta Stove Works, Inc., Atlanta, Ga., BEE-0983 (other).

Atlanta Stove Works, Inc. filed an Application for Exception from the provisions of 10 CFR Part 430, Appendix O. The exception request, if granted, would permit the firm to market certain types of vented gas space heaters without regard to the foregoing provisions. On June 18, 1980, the Department of Energy issues a Proposed Decision and Order which determined that the exception request be granted.

Names of Petitions and Case Numbers

Atlantic Richfield Co., BEE-0696.
Chevron U.S.A., Inc., BEE-0614.
Cities Service Company, BEE-0735.
Derby Refining/Coastal Corp., BEE-1130.
Diamond Shamrock Corp., BEE-0774.
Farmland Industries, BEE-0899.
Getty Refining & Marketing Co., BEE-0492.
Gulf Oil Corporation, BEE-0529.
Kerr-McGee Corporation, BEE-1010.
Pacific Resources, Inc., BEE-0589.
Pester Refining Company, BEE-0650.
Phillips Petroleum Company, BEE-0693.
Standard Oil Company of Indiana, BEE-0702.
Standard Oil Company of Ohio, BEE-0974.
Sun Oil Company of Pennsylvania, BEE-1159.
Texaco, Inc., BEE-0769.
Time Oil Company, BEE-0703.
Total Petroleum Company, BEE-0985.
United Refining Company, BEE-0738.
Vickers Petroleum Corporation, BEE-0557.

See Appendix A and see Appendix A, gasohol

The twenty refiners listed above each filed an Application for Exception from the provisions of 10 CFR 212.85(c)(1)(i)(B). The exception request, if granted, would permit each refiner to recover the incremental costs it incurs in acquiring alcohol for gasohol purposes and the incremental costs involved in blending and marketing gasohol. On June 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception requests be granted.

Chronister Oil Co. d.b.a. Lincoln Land Oil Co., Springfield, Ill., BEE-0475, gasohol

Chronister Oil Co. DBA Lincoln Land Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Chronister to purchase approximately 1 million gallons of unleaded motor gasoline per month in addition to its base period allocation in order to expand its gasohol marketing program. On June 17, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part, and that Chronister's base period allocation of unleaded gasoline be increased by 120,000 gallons per month.

Dow Chemical, U.S.A., Freeport, Tex., BEE-0285, crude oil

Dow Chemical U.S.A. filed an Application

for Exception from the provisions of 10 CFR 211.65 (the Crude Oil Buy/Sell Program). The exception request, if granted, would permit Dow to receive an allocation of 50,000 barrels of crude oil per day for its newly-constructed refinery at Freeport, Texas. On June 20, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

R. H. Engelke, San Antonio, Tex., BXE-0696, crude oil

R. H. Engelke filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The Exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Bertha Copsey Lease for the benefit of the working interest owners at market price levels. On June 19, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted.

Georgia-Pacific Corp., Bellingham, Wash., BEE-0759, motor gasoline

Georgia-Pacific Corporation filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Georgia-Pacific to increase its base period allocation by an amount sufficient to denature the alcohol it produces which in turn is sold for blending into gasohol. On June 17, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Greater Washington/Maryland Service Station Association, Greenbelt, Md., BEE-0763, gasohol

The greater Washington/Maryland Service Station Association filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit 110 member service stations to receive additional quantities of unleaded gasoline in order to market gasohol. On June 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted and that the applicant service stations receive a quantity of additional unleaded gasoline equivalent to the base period volumes that they are willing to devote to gasohol production and marketing.

Naph-Sol Refining Co., Inc., Washington, D.C., DEE-7924, gasohol

Naph-Sol Refining Co., Inc. filed an Application for Exception from the provisions of 10 CFR Subpart F. The exception request, if granted, would permit Naph-Sol to receive an allocation of unleaded gasoline for the express purpose of blending gasohol. On June 17, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

Seaview Petroleum Co., Blue Bell, Pa., DEE-6942, crude oil

Seaview Petroleum Company filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would permit Seaview to sell entitlements for the crude oil which the firm purchased to establish an initial, or starting inventory for its new refinery. On June 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Wadsworth Oil Co., Inc., Clanton, Ala., BEE-1022, gasohol

Wadsworth Oil Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 211. The exception request, if granted, would permit the firm to receive an increased allocation of motor gasoline for the express purpose of blending and marketing gasohol. On June 18, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Petitions involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case Number, and Location

Columbus Public School, BEE-1012, Columbus, OH.
Ernest J. Short & Son, DEE-4861, Londsburg, NM.
Manny's Stand, Serv., DEE-6720, Milwaukee WI.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocaton Regulations. The exception requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case Number, and Location

Automatic Gas Distributors, Inc., DEE-5103, DEE-5104, DEE-5106, DEE-5107, DEE-5108, DEE-5109, Denver, CO.
Cotten Service Stations & Rentals, DEE-6464, Dallas, TX.
Housley Distributing, DEE-8113, Silver City, NM.
Pittman Oil Distributors, DEE-7183, Nashville, IN.
Saxon Oil Co., Inc., DEE-7504, Opelika, AL.
Ted Harrison Oil Co., DEE-6606, Virginia, IL.

[FR Doc. 80-20760 Filed 7-10-80; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders; Week of June 2 Through June 6, 1980

During the week of June 9 through June 13, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding which the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before July 31, 1980. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in this proceeding and will prepare an official service list which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

July 7, 1980.

Proposed Remedial Orders

Art's Chevron Service, San Pablo, Calif., BRO-1229, motor gasoline

On June 4, 1980, Art's Chevron Service, 6675 San Pablo Avenue, San Pablo, California 94806, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 20, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 to January 30, 1980, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the Art's Chevron Service violations resulted in $0,582.37 of overcharges.

H. H. Gungoll & Associates, Enid, Okla., BRO-1234, crude oil

On June 5, 1980, H. H. Gungoll & Associates (Gungoll), P.O. Box 1422, Enid, Oklahoma 73701 (Gungoll), filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on May 19, 1980. In the Proposed Remedial Order the Southwest District found that during the period January 10, 1975 to August 31, 1976, Gungoll committed pricing violations in the sale of crude oil produced from the Van Deventer property in Garfield County, Oklahoma. According to the Proposed Remedial Order the Gungoll violations resulted in $70,343.12 of overcharges.

Richard Thomas Chevron, Dublin, Calif., BRO-1230, motor gasoline

On June 4, 1980, Richard Thomas Chevron, 7007 San Ramon Valley Rd., Dublin, California, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 14, 1980. In the Proposed Remedial Order the Western

District found that during the period December 1, 1979 to March 31, 1980, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the Richard Thomas Chevron violations resulted in $2,158.06 of overcharges.

Tom's Union, Pleasant Hill, Calif., BRO-1231, motor gasoline

On June 4, 1980, Tom's Union, 1690 Contra Costa Blvd., Pleasant Hill, California 94523, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 20, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 to January 31; 1980, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the Tom's Union violations resulted in $1,602.33 of overcharges.

Hal Abel Chevron, Alamo, Calif., BRO-1232, motor gasoline

On June 4, 1980, Hal Abel Chevron, 3177 Danville Blvd., Alamo, California 94507 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 20, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 to April 14, 1980, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the Hal Abel Chevron violations resulted in $15,856.36 of overcharges.

John Laveaga's Chevron, San Ramon, Calif., BRO-1233, motor gasoline

On June 4, 1980, John Laveaga's Chevron, 21320 San Ramon Valley Blvd., San Ramon, California 94583 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 14, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 to March 31, 1980, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the John Laveaga's Chevron violations resulted in $11,621.93 of overcharges.

L. O. Ward, Enid, Okla., BRO-1235, crude oil

On June 5, 1980, L.O. Ward, P.O. Box 1187, Enid, Oklahoma 73701, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on May 19, 1980. In the Proposed Remedial Order the Southwest District found that during the period January 1974 through December 1976. L. O. Ward committed pricing violations in the sale of crude oil in the State of Oklahoma. According to the Proposed Remedial Order the Ward violations resulted in $259,726.21 of overcharges.

McDowell Exxon, Petaluma, Calif., BRO-1228, motor gasoline

On June 4, 1980, McDowell Exxon, 301 South McDowell Blvd., Petaluma, California 94952, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on May 20, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 to October 20, 1979, the firm committed pricing violations in the sale of motor gasoline in the State of California. According to the Proposed Remedial Order the McDowell Exxon violations resulted in $6,998.40 of overcharges.

[FR Doc. 80-20768 Filed 7-10-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1536-6]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the Environmental Impact Statements (EISs) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of June 30, 1980 to July 4, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from July 11, 1980 and will end on August 25, 1980. The 30-day review period for final EIS's as calculated from July 11, 1980 will end on August 11, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For public availability and/or hard copy reproduction of EISs' filed prior to March 1980: Environmental Law Institute, 1346 Connecticut Avenue NW., Washington, DC 20036.

For hard copy reproduction or microfiche: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

FOR FURTHER INFORMATION CONTACT:

Kathi L. Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to Section 1506.10(a), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of June 30, 1980 to July 4, 1980 the 30-day review period will be calculated from July 11, 1980. The review period will end on August 11, 1980.

Appendix I sets forth a list of EIS's filed with EPA during the week of June 30, 1980 to July 4, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this Notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or EPA has approved a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the newly established date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: July 8, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

Appendix I—EIS's filed with EPA During the Week of: June 30, 1980 Through July 3, 1980

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Rural Electrification Administration

Draft

JK Smith Power Station Units 1&2, Transmission, Clark County, Ky., July 2: Proposed is the guarantee of a loan for construction and operation of two 650 MW coal-fired electric generating units, with a total generation capacity of 1300 MW gross, at a new plant site to be located near Trapp in Clark County, Kentucky. Stack emissions will be controlled by lime-limestone scrubbers, electrostatic precipitators and boiler design. Condenser cooling will be accomplished by the use of cooling towers. Plant water will come from the Kentucky River normally, or from an onsite water reservoir during periods of extra ordinarily low river flow. Cooperating agencies include: EPA, COE, USDI and State of Kentucky (USDA-REA-EIS (ADM) 80-8-D). (EIS order No. 800499.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Atten: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Draft

Perry Creek Flood Control, Sioux City, Woodbury and Plymouth Counties, Iowa, June 30: Proposed is flood control protection for Perry Creek in Sioux City, Woodbury and Plymouth Counties, Iowa. Three plans have been developed. Plan 1 would consist primarily of channelization which would meet most flood control needs but would destroy a small amount of low-quality reparian habitat. Plan 2 consists of channelization and two single-purpose dams meeting most flood control needs but would take 47 acres of prime farmland out of production. Plan 3 consists predominantly of the relocation of homes and businesses, meets some flood control needs and reestablishes a large amount of urban wildlife habitat (Omaha District). (EIS order No. 800487.)

Draft Supplement

Roseau River Flood Control, 404 (b)(1), (DS-1), Roseau and Kittson Counties, Minn., July 1: Proposed is a flood control plan for the Roseau River Basin in Roseau and Kittson Counties, Minnesota and southcentral Manitoba, Canada. Approximately 60 percent of the Basin lies within the United States, Channel modification will begin from river mile 93.5 to river mile 137.4 at the Roseau Dam. The plan also includes remedial work along approximately 10 miles of the river in Canada. The alternatives are: (1) no build, (2) non-structural measures, (3) structural alternatives and (4) several channel modifications (St. Paul District). (EIS order No. 800492.)

Final

Louisa Generating Station, Permit, Louisa and Muscatine, Iowa, July 1: Proposed is the construction and operation of a 650,000 kilowatt, coal-fired, steam electric generating station adjacent to the Mississippi River in Louisa and Muscatine Counties, Iowa, to be known as Louisa Generating Station. Included on the 1655 acre site will be a main building complex housing the steam boiler, a 650,000 kilowatt turbine generator, air pollution control facilities, coal and material handling and storage areas; a 610 foot stack; cooling tower; 4 wells; electric substation; river discharge structure; spur rail line; and ash storage ponds. The project will also require three 345kV transmission lines (Rock Island District). Comments made by: USDA, DOI, EPA, State agencies, groups and individuals. (EIS order No. 800490.)

The Rural Electrification Administration (REA) has participated in the developmental process of this Environmental Impact Statement (EIS) as a Cooperating Federal agency, with its internal designation as USDA-REA-EIS (Adm) 79-11-F. REA may use this final EIS to fulfill the NEPA requirements in conjunction with its potentially forthcoming major Federal action for guaranteeing loan funds in support of 4.6% project interest acquisition by the Eastern Iowa Light and Power Cooperative.

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Wallace Stickney, Region 1, Environmental Protection Agency, John F. Kennedy Federal Bldg., Room 2203, Boston, Massachusette 02203, (617) 223-4635.

Final

Southern Rockingham 208 Project, Rockingham County, N.H., June 30: Proposed is a 208 project for the Southern Rockingham planning region in Rockingham County, New Hampshire. The project is divided into seven areas for the Towns of Atkinson, Hampstead, Kingston, Newton, Plaistow, Salem and Windham. Comments made by: DOI, USDA, FERC, State and local agencies. (EIS Order No. 800489.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6300.

Final

Rockrimmon Lake Area, Colorado Springs, El Paso County, COLO., July 1: Proposed is the issuance of HUD home mortgage insurance for the Lake Area of the Rockrimmon planned development in Colorado Springs, El Paso County, Colorado. The insurance has been requested for 402 single-family homes on 151 acres. The total development encompasses 2,380 acres and will contain approximately 5,500 dwelling units as well as commercial, school and park areas. (HUD-R08-EIS-80-IVF). Comments made by: USAF, COE, DOI, DOT, HEW, EPA, State and local agencies. (EIS order No. 800495.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

Bureau of Land Management

Final

Bannock-Oneida Grazing Management Plan, several counties, Idaho, July 2: Proposed is grazing management for the Bannock-Oneida Area in Cassie, Oneida, Power and Bannock Counties, Idaho. The area encompasses 431,508 acres of public land. The alternatives considered are: 1) a balanced mix of used while ensuring a sustained yield from the rangeland ecosystem, 2) maximize livestock use of the inventoried vegetative resource, 3) no livestock grazing, 4) decreased livestock grazing, and 5) no action (FES-80-20). Comments made by: DOI, USDA, EPA, AHP, State and local agencies, groups, individuals, and businesses. (EIS order No. 800496.)

Rocky Mountain Liquid Hydrocarbon Pipeline, Permit, several, July 2: Proposed is the granting of right-of-way for the construction of the Rocky Mountain Liquid Hydrocarbon Pipeline from Hobbs Station in Gaine County, Texas through New Mexico, Colorado and Utah to the Rocky Mountain Overthrust Area of Wyoming. The pipeline would extend for 1,172 miles and would be used to transport up to 65,000 barrels per day of mixed stream hydrocarbons. the alternatives consider no action, delay of action, and three route alignments. (FES-80-19). Comments made by: USAD, DOI, HEW, COE, EPA, DOC, State and local agencies. (EIS order No. 800497.)

Water and Power Resources Services

Final

Animas-LaPlata Water Supply Project, Animas River, San Juan, LaPlata, and Montezuma Counties, Colo. and New Mexico: July 1: Proposed is the Animas-LaPlata water supply project located in San Juan County, New Mexico and LaPlata and Montezuma Counties, Colorado. The project would involve the diversion of water from the Animas River to the LaPlata and Mancos River drainages and would include: two off-stream reservoirs, two pumping stations, three conveyance systems, a Power transmission line, and two diversion dams on the LaPlata River. The project would provide water for irrigation, and municipal and industrial use, in addition to recreational opportunities. (FES-80-18). Comments made by: AHP, DOI, USDA, EPA, FERC, State and local agencies, groups and individuals. (EIS order No. 800493.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

IA-150 improvements, Buchanan County, Iowa, July 1: Proposed is the improvement of a seven-mile segment of IA-150 in Buchanan County, Iowa. This project would involve two basic construction concepts and a no build alternative. The two construction concepts provide alternatives for improvements to the existing highway alignment and also for construction on a new alignment designed as a westerly bypass of Independence. The alternatives are: 1) no build, 2) resurfacing, shouldering and ditching on existing alignment, 3) widening, resurfacing, and reconstruction of existing alignment, 4) one-way pairs, 5) bypass-alternate and 6) bypass railroad variation (FHWA-IOWA-EIS-80-2D). (EIS order No. 800494.)

Oregon Coast Highway, US 101, OR-9, improvement, Lane County, Oreg., July 2: Proposed is the reconstruction of 5.44 miles of the Oregon Coast Highway, US 101 and OR-9 in Lane County, Oregon. The reconstruction would be done in three sections: 1) an improved two lane section; 2) a three lane section, turning median added; and 3) a five lane section, turning median and two travel lanes added. Highway shoulders would be included as would sidewalks and curbing in the city; shoulders would be signed and stripped for a bike-way. The two alternatives are: 1) no action and 2) a build alternative. (FHWA-OR-EIS-80-04-D)

EIS's Filed During the Week of June 30, 1980, Through July 3, 1980

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date filed	Originating agency No
Colorado	Montezuma	Final	Animas-La Plata Water Supply Project, Animas River.	800493	July 1, 1980	DOI
	La Plata	Final	Animas-La Plata Water Supply Project, Animas River.	800493	July 1, 1980	DOI
	El Paso	Final	Rockrimmon Lake Area, Colorado Springs	800495	July 1, 1980	HUD
Idaho	Several	Final	Bannock-Oneida Grazing Management Plan	800496	July 2, 1980	DOI
Iowa	Buchanan	Draft	IA-150 Improvements	800494	July 1, 1980	DOT
	Louisa	Final	Louisa Generating Station, Permit	800490	July 1, 1980	COE
	Muscatine	Final	Louisa Generating Station, Permit	800490	July 1, 1980	COE
	Plymouth	Draft	Perry Creek Flood Control, Sioux City	800487	June 30, 1980	COE
	Woodbury	Draft	Perry Creek Flood Control, Sioux City	800487	June 30, 1980	COE
Kentucky	Clark	Draft	JK Smith Power Station Units 1 & 2, Transmission	800499	July 2, 1980	USDA
Maryland	Anne Arundel	Final	Chesterfield Subdivision, Mortgage Insurance	800488	Apr 24, 1980	HUD
Minnesota	Kittson	Supplement	Roseau River Flood Control, 404(B)(1), (DS-1)	800492	July 1, 1980	COE
	Roseau	Supplement	Roseau River Flood Control, 404(B)(1), (DS-1)	800492	July 1, 1980	COE
New Hampshire	Rockingham	Final	Southern Rockingham 208 Project	800489	June 30, 1980	EPA
New Mexico	San Juan	Final	Animas-La Plata Water Supply Project, Animas River.	800493	July 1, 1980	DOI
Oregon	Lane	Draft	Oregon Coast Highway, U.S. 101, OR-9, Improvement.	800498	July 2, 1980	DOT
Several		Final	Rocky Mountain Liquid Hydrocarbon Pipeline, Permit.	800497	July 2, 1980	DOI

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No	Date notice of availability published in "Federal Register"	Waiver	Date review extension terminates
U.S. DEPARTMENT OF TRANSPORTATION					
Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-4357	I-150 Improvements, Buchanan County, Iowa. Rehabilitation Act of 1973, Section 504, Implementing Regulations (please see below).	Draft 800494	July 11, 1980	Extension	Aug 29, 1980
		Draft	June 27, 1980	Extension	Aug 25, 1980
DOT has encountered problems with the timely receipt of this DEIS. In order to resolve this situation, DOT has remailed the DEIS and has extended the review period for two (2) weeks					
U.S. DEPARTMENT OF COMMERCE					
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335	Pacific Pink Shrimp Fishery, FMP, off Washington, Oregon, and California.	Draft 800469	July 7, 1980	Extension	Aug 21, 1980

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/ accession No.	Date notice of availability published in "Federal Register"	Correction
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT				
Mr. Richard H. Broun, Director, Office of Environmental Quality, room 7274, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755-6303.	Chesterfield Subdivision, Morigage Insurance. This EIS was inadvertently omitted from the Federal Register Report dated May 2, 1980. The comment period began on May 2, 1980 and ended on June 16, 1980.	Final 800488	July 11, 1980	Please see below.
	Chesterfield Subdivision, Morigage Insurance, Maryland, County Anne Arundel. Proposed is the issuance of HUD home morigage insurance for the Chesterfield Subdivision in Anne Arundel County, Maryland. The subdivision is located on 380 acres and will consist of 1,646 units plus a commercial and office space area. The units to be constructed will include a mixture of single-family homes, semi-detached, townhouses, and garden apartments. Comments Made By: DOI, EPA, HEW, USDA, local agencies. (EIS Order No. 800488).	Final	Apr 24, 1980	

Correction: In last weeks report published July 7, 1980 it is stated that time periods for Drafts and Finals would be calculated from July 6, 1980. The correct date of calculation is July 4, 1980. This does not effect the close of comment periods. EIS's filed during the week of June 23, 1980 through June 27, 1980, comments will be due for Drafts by August 18, 1980, and Finals will be due by August 11, 1980.

[FR Doc. 80-20778 Filed 7-10-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL RESERVE SYSTEM

Equitable Bankshares of Colorado, Inc.; Formation of Bank Holding Company

Equitable Bankshares of Colorado, Inc., Denver, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Women's Bank, N.A., Denver, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 6, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-20688 Filed 7-10-80; 8:45 am]

BILLING CODE 6210-01-M

First Alabama Bancshares, Inc.; Acquisition of Bank

First Alabama Bancshares, Inc., Montgomery, Alabama, has supplied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to McMillan & Company, Bankers Incorporated, Livingston, Alabama, of which approximately 53 percent will be acquired from Sumter Securities, Inc., Livingston, Alabama, a bank holding company. Upon consummation of the proposed transaction Sumter will be acquired by Applicant and its assets will be liquidated. The factors that are considered in acting on the application

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-20690 Filed 7-10-80; 8:45 am]

BILLING CODE 6210-01-M

First Villa Grove Bancorp., Inc.; Formation of Bank Holding Company

First Villa Grove Bancorp., Inc. Villa Grove, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank of Villa Grove, Villa Grove, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later that August 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-20689 Filed 7-10-80; 8:45 am]

BILLING CODE 6210-01-M

La Grange Park Banc Corp.; Formation of Bank Holding Company

La Grange Park Banc Corporation, Chicago, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of La Grange Park, La Grange Park, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 30, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 7, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-20686 Filed 7-10-80; 8:45 am]

BILLING CODE 6210-01-M

Security State Bank Shares; Formation of Bank Holding Company

Security State Bank Shares, Polson, Montana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of The Security State Bank, Polson, Montana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, July 3, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-20687 Filed 7-10-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Henry P. Roberts, District Director, Minneapolis District Office, Minneapolis, MN.

DATE: The meeting will be held at 2:30 p.m., Thursday, July 17, 1980.

ADDRESS: The meeting will be held at the Federal Courts Bldg., 110 S. 4th St., Rm. B-15, Minneapolis, MN 55401.

FOR FURTHER INFORMATION CONTACT: Blanche L. Erkel, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-725-2121.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Minneapolis District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 1, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-20427 Filed 7-10-80; 8:45 am]

BILLING CODE 4110-13-M

Public Health Service

National Center for Health Care Technology; Meeting

Notice is hereby given that the National Center for Health Care Technology and the Food and Drug Administration will hold a national conference July 28-30 at the Shoreham Hotel in Washington, D.C. The conference will discuss issues involving

a recently developed technique that can detect neural tube defects in a fetus by testing the blood of the mother.

The technique, called maternal serum alpha-fetoprotein testing, will detect over 80 percent of neural tube defects which manifest themselves at birth as either anencephaly or spina bifida. Title of the conference is "Maternal Serum Alpha-Fetoprotein: Issues in the Prenatal Screening and Diagnosis of Neural Tube Defects."

The meeting is open to any interested individuals and groups. Purposes of the conference are to heighten public awareness of the complex issues posed by the use of the alpha-fetoprotein test and other procedures to identify fetuses with defects. Another is to educate health professionals, scientists and consumers about the proper use of the test.

A high level of alpha-fetoprotein in the mother's blood indicates the fetus has an above average chance of suffering from anencephaly or spina bifida. These malformations occur in one to two infants per thousand and often result in handicaps such as lower body paralysis, mental retardation, and death.

Following the test, follow-up procedures can be done to achieve a precise diagnosis. If the fetus is affected, prospective parents can make an informed choice whether to plan for the birth of an affected child or terminate the pregnancy.

The meeting will be held from 8:30 a.m. to 5:30 p.m. on July 28 and 29, and from 8:30 a.m. to 12:30 p.m. on Luly 30. Major sessions will address: medical and scientific background; ethical, legal, and economic perspectives; and issues in implementation. In addition, workshops will focus on more specialized aspects of this test.

For further information about the conference call A. Hope Sayles or Blaun-Eva T. Brewton at (202) 328-5739 or 5775.

The conference is designed for providers of prenatal and neonatal care, genetic counselors, pathologists, state and local health department personnel, health services administrators, laboratory personnel, consumers, and public interest groups.

Dated: July 3, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-20684 Filed 7-10-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. N-80-1013]

Draft Trust Indenture and Draft Loan Agreement for Tax-Exempt Financing with GNMA Mortgage-Backed Securities

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: General Notice—Publication of Draft Trust Indenture and Draft Loan Agreement—Solicitation of Public Comment.

SUMMARY: This Notice invites comments on a draft Trust Indenture and draft Loan Agreement which are being developed by the Department for use in conjunction with the combination tax-exempt financing program (tax-exempt obligations backed by GNMA mortgage-backed securities). Part 811 implementing this program was adopted on June 18, 1980 (45 FR 41382).

FOR FURTHER INFORMATION CONTACT: Irving P. Margulies, Associate General Counsel for Finance and Administrative Law, Office of General Counsel, Department of HUD, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-7203 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The draft Trust Indenture and draft Loan Agreement are being published for two reasons. First, the two draft documents are essential in order for the public to understand HUD's proposed implementation of the final rule for tax-exempt combination financing. The Part 811 regulations require a Trust Indenture and a Loan Agreement in a format prescribed by HUD. These documents will become standardized model formats which will satisfy this regulatory requirement and will contain certain provisions regarding the flow of funds, disclosure of fees, legal obligations of the various parties, and the structuring of the various transactions which comprise the combination financing program.

Second, several of the specific provisions of the draft documents are under internal discussion and the Department recognizes that various viable alternatives exist. The flow of funds under the Trust Indenture is an example. An alternative Article IV is set forth to indicate the options presently under consideration. Inasmuch as the draft documents include highly technical provisions for use with a complex bond and mortgage financing mechanism, public advice and comment is invited with respect to substantive provisions and policy. All comments should be filed prior to July 25, 1980 with:

The Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th St. S.W., Washington, D.C. 20410.

Jane McGrew,

General Counsel.

Issued at Washington, D.C., July 7, 1980.

Instruction for Completion of Trust Indenture

1. General

The Trust Indenture is to be use in all combination financing transactions under 24 CFR Part 811, Subpart B, regardless of whether the transaction involves the issuance of tax-exempt bonds, notes or pass-through obligations.

The Trust Indenture is the primary responsibility of the HUD Field Counsel. However, the appropriate administrative offices must approve all of the fees, charges, interest rates and cost of issuance prior to review by Field Counsel. Field Counsel shall determine that the Trust Indenture has been completed, administratively approved and executed in accordance with the directives set forth below. Field Counsel are authorized to approve nonsubstantive changes and changes which are required by local law if such changes do not conflict with any statutory or regulatory requirements of HUD. All other changes shall be referred in writing to the General Counsel.

2. Introductory Paragraph

(a) Parties (page 1): The Financing Agency and the Trustee are the only acceptable parties to the Trust Indenture. Appropriate titles and descriptions of these entities shall be inserted in the introductory paragraph.

(b) Effective Date and Execution (page 1): The effective date of the Trust Indenture shall be the date of the issuance of the tax-exempt obligations which may precede, but may not be subsequent to, the date of initial endorsement. The Trust Indenture must be executed prior to initial endorsement if required by local law or custom with respect to witnesses, seals, etc.

3. Recitals

(a) First recital (page 1): describe the legal bases for the creation of the Financing Agency.

(b) Second recital (page 1): insert number, letter or term identifying the resolution or resolutions of the Financing Agency relating to the tax exempt obligations. Specify those legal powers which enable the Agency to perform all those acts necessary to issue and make payments on the tax-exempt obligations.

(c) Third recital (page 1): insert in the four blanks the following information: the name of the Mortgagor; the legal structure of the Mortgagor; the state in which the Mortgagor is legally organized and authorized to do business; and number of units in the project; and the city or county and state in which the project is located.

(d) Fourth recital (page 2): insert the following information in the three blanks: name of the Mortgagee; the legal structure of

the Mortgagee; and the state in which the Mortgagee is legally organized and authorized to do business.

4, Main Text

(a) Section 1.06 (page 6): insert beginning and ending dates for the fiscal year which has been selected for purposes of reporting on the project.

(b) Section 3.01 (page 18): insert appropriate redemption schedule.

5. Exhibit A

(a) Form of Obligation: insert appropriate information in blanks provided to describe the obligations. The term "State" at bottom of first page may be changed to "Commonwealth; if appropriate without requesting HUD approval.

(b) Form of Coupon: insert appropriate information in the blanks provided to described obligations.

Trust Indenture

Table of Contents

This trust indenture, dated as of ———, with any amendments or supplements, (the Indenture) is between ———— (the Financing Agency), and ———, a ———— duly organized and doing business under the laws of ——— and having its principal office in ——— (the Trustee);

Whereas,

Whereas, pursuant to the authorities above and Resolution———, the Financing Agency has the following powers, among others,

Whereas, ——— (the Mortgagor), a ——— organized and existing under the laws of ———, is developing a——— unit Section 8 assisted, housing project (the Project) on real property located in ———, more particularly described in the recorded mortgage securing an FHA insured loan made for the development of such Project; and

Whereas, ——— (the Mortgagee), a ——— organized and existing under the laws of ———, holds a firm commitment issued by the Federal Housing Administration for the insurance of construction advances made by the Mortgagee to finance the construction and for the permanent financing of the Project pursuant to the provisions of Section 221 of the National Housing Act of 1934, as amended; and

Whereas, the Mortgagee is an eligible Government National Mortgage Association (GNMA) issuer of GNMA guaranteed Mortgage-Backed Securities under Section 306(g) and related provisions of the National Housing Act of 1934, as amended; and

Whereas, GNMA guaranteed Mortgage-Backed Securities issued by the Mortgagee pursuant to certain GNMA Guaranty Agreements are backed by the full faith and credit of the United States; and

Whereas, pursuant to the terms of a Guaranty Agreement, the Mortgagee will issue Construction Loan Certificates (CLC's) in connection with construction advances made pursuant to the FHA Building Loan Agreement between the Mortgagor and the Mortgagee; and

Whereas, upon completion of the project and final endorsement of the mortgage loan and, pursuant to the terms of another Guaranty Agreement, the Mortgagee will issue a Permanent Loan Certificate (PLC) which will be used to retire all outstanding CLC's; and

Whereas, pursuant to a Loan Agreement (the Agreement) between the Trustee and the Mortgagee, the Mortgagee has agreed to make the aforesaid mortgage loan to the Mortgagor; and

Whereas, the Financing Agency is authorized by law and deems it necessary to borrow money for the purpose of aiding and assisting in the making of a loan for the financing and development of the Project through the purchase of the GNMA Securities, all under the terms of this Indenture, and to that end has duly authorized the issuance of its Obligations and the execution and delivery of this Indenture; and

Whereas, the Trustee has accepted the trusts created by this Indenture and to that end has joined in the execution of this Indenture; and

Whereas, all acts, conditions and things required by law have been accomplished in order to make this Indenture a valid and binding trust agreement for the security of the Obligations in accordance with its terms;

Now, Therefore, in consideration of the mutual promises of this Indenture, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Obligations by the Holders, and for the purpose of fixing and declaring the terms and conditions upon which the Obligations are to be issued, authenticated, delivered, secured, and accepted by the purchaser or purchasers of the Obligations, and in order to secure the payment of all the Obligations issued and outstanding hereunder and the interest thereon and in order to secure the performance and observance of all the covenants, agreements, and conditions in connection with said Obligations, the Financing Agency and the Trustee have executed and delivered this Indenture, and the Trustee and the Financing Agency hereby covenant and agree that all funds received and held by the Trustee shall be received and held as security for the fulfillment of the duties of the Financing Agency hereunder and for the benefit of the Holders of the Obligations, as follows:

Article I—Definitions

The following terms shall have the meanings specified in the recitals: Agreement, Financing Agency, Mortgagee, Mortgagor, Project, and Trustee.

Section 1.01 Construction Loan Certificates (CLC's)

Construction Loan Certificates (CLC's) means GNMA Mortgage-Backed Securities to be issued by the GNMA Issuer, and held by Trustee for and in the name of the Financing Agency as the registered owner, during the period of construction of the Project and prior to the issuance of the PLC.

Section 1.02 Contract of Mortgage Insurance

Contract of Mortgage Insurance means the written instrument which establishes rights and responsibilities of the mortgagee and FHA with respect to the insurance of the mortgage loan for the Project, as authorized by Section 221 of the National Housing Act, and as set forth in full at Title 24 of the Code of Federal Regulations, Part 221, Subpart D.

Section 1.03 Cost of Issuance

Cost of Issuance means any items of expense payable or reimbursable, directly or indirectly by the Financing Agency and related to the authorization, sale and issuance of Obligations, including but not limited to expenses in connection with the offering, sale, and issuance of such Obligations, printing costs, costs of preparation and reproduction of documents, filing and recording fees, legal fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of the Obligations, and any other costs, charges or fees in connection with the original issuance and delivery of Obligations and of any supplemental Obligations issued hereunder.

Section 1.04 FHA

FHA means the Federal Housing Administration or, if the context requires, the Secretary of Housing and Urban Development of the United States acting by and through the Federal Housing Commissioner or the Commissioner's authorized representative.

Section 1.05 Final Endorsement

Final Endorsement means the final endorsement of the insured note by FHA after completion of the Project pursuant to the FHA firm commitment.

Section 1.06 Fiscal Year

Fiscal Year means the period established for the Trustee's financial reporting purposes commencing the first day of ——— of each year and ending on the last day of ——— of the following year.

Section 1.07 GNMA

GNMA means the Government National Mortgage Association, and any successor, agency or instrumentality of the United States which is authorized by Federal Law to guarantee the payment of GNMA Securities and whose guaranty is secured by the pledge of the full faith and credit of the United States.

Section 1.08 GNMA Guaranty Agreement

GNMA Guaranty Agreement means one or more Guaranty Agreements entered into by the GNMA Issuer and GNMA. Standard forms of the Guaranty Agreement are located in the Mortgage-Backed Securities Guide issued by GNMA (GNMA 5500.1, a HUD Handbook). The standard forms (HUD Forms 1723 and 1730) in this guide existing on the date of this Indenture are identical in every respect to the actual guaranty agreements entered into by GNMA and the GNMA Issuer, except for the particulars identifying the specific securities guaranteed, the GNMA Issuer, the date of execution, the signatories and such other similar matters. Copies of the executed GNMA Guaranty Agreements will be on file with (a) GNMA, (b) the GNMA Issuer and (c) the Trustee.

Section 1.9 GNMA Issuer

GNMA Issuer means the Mortgagee for the Project who issues the GNMA Mortgage-Backed Securities.

Section 1.10 GNMA Securities

GNMA Securities means fully modified pass-through, mortgage-backed securities in the form of certificates payable from the proceeds of the Mortgage. GNMA Securities include both Construction Loan Certificates and a Project Loan Certificate as defined in this Indenture.

Section 1.11 HAP Contract

HAP Contract means the Housing Assistance Payments Contract to be entered into between HUD and the Mortgagor under Section 8 of the United States Housing Act of 1937 upon completion of construction and acceptance of the Project by HUD under the terms and conditions of the Agreement to Enter into the HAP Contract.

Section 1.12 HUD

HUD means the United States of America acting by and through the Department of Housing and Urban Development or any successor thereto.

Section 1.13 HUD Regulations or Applicable Regulations

HUD Regulations or Applicable Regulations means, unless the context requires or states otherwise, those regulations set forth in Title 24 of the Code of Federal Regulations at Part 811, Subpart B.

Section 1.14 Holder(s)

Holder or any similar term whenever employed, with respect to an Obligation which shall be registered as to principal, means the person in whose name such Obligation shall be registered, and whenever employed herein with respect to an Obligation which shall not be registered as to principal or a coupon, shall mean the bearer of such Obligation or coupon or means the purchaser of a pass-through Obligation.

Section 1.15 Mortgage

Mortgage means the first mortgage on the Project granted by the Mortgagor to the Mortgagee as security for the repayment of the FHA insured note.

Section 1.16 Obligation(s)

Obligation or any similar term means any bonds, notes or pass-through obligations, authenticated under and delivered in accordance with this Indenture.

Section 1.17 Permitted Investments

Permitted Investments means (1) time deposits that are Federally insured; (2) Treasury securities; (3) securities issued by a Federal agency or a Federally sponsored agency; or (4) certificates of deposit that are fully secured by a pledge of securities similar to those listed in (1)–(3) above.

Section 1.18 Project Loan Certificate (PLC)

Project Loan Certificate (PLC) means a GNMA Mortgage-Backed Security to be issued by the GNMA Issuer in exchange for the CLC's held by the Trustee for and in the name of the Financing Agency as registered owner, after completion of the Project and final endorsement.

Section 1.19 Trust Estate

Trust Estate means all those monies, GNMA Securities and other personalty received by the Trustee under this Indenture and pledged for the security of the Holders.

Article II—Form, Execution, Registration and Delivery of Obligations

Section 2.01 Form of Obligations

The Obligations are issuable as coupon Obligations in the denomination of $——— each, registrable as to principal alone, or as registered Obligations without coupons in the denomination of $——— or any integral multiple thereof. The Obligations shall be substantially in the forms set forth as Exhibit A with changes only as approved in writing by HUD. The Obligations shall be designated "———," dated as of ——— 1, 19—, and shall bear interest until their payment at a rate of rates not exceeding — per centum per annum until payment of the principal amount, the exact rate to be determined by competitive bidding or negotiated sale. The interest shall be payable seminannually on ——— 1 and ——— 1 in each year commencing ——— 1, 19—. Until the maturity of the Obligations interest shall be paid only upon presentation and surrender of the respective coupons. The coupon attached to the coupon Obligations shall be substantially in the form set forth in Exhibit A with changes only as approved in writing by HUD.

Both the principal of and interest on the Obligations shall be payable in such coin or currency of the United States of America as may be, on the respective dates of payment, legal tender for the payment of debts due the United States of America. Payment of the interest on any coupon Obligation to its maturity shall be made only upon presentation and surrender at the principal corporate trust office of the Trustee of the coupons representing the interest as its falls due. Payment of the principal of any coupon Obligation shall be made only upon the presentation and surrender of the coupon Obligation. The principal of the coupon Obligations shall be payable at the principal corporate trust office of the Trustee. Payment of the interest on any registered Obligation without coupons shall be made on any interest payment date by check mailed to the person and address appearing on the Obligation registration books of the Financing Agency. The principal of any registered Obligation without coupons or any coupon Obligation registered as to principal alone shall be payable upon presentation and surrender as it falls due at the principal corporate trust office of the Trustee.

Section 2.02 Execution of Obligations and Coupons

The Obligations and coupons shall be signed by, or bear the facsimile signature of, the appropriate officer of the Financing Agency and a corporate seal shall be affixed and attested by the appropriate officer of the Financing Agency. In the event that any of the officers who have signed or sealed any of the Obligations or coupons cease to be officers of the Financing Agency before the Obligations or coupons have been authenticiated or delivered by the Trustee, or issued by the Financing Agency, such Obligations or coupons may, nevertheless, be authenticated, delivered, and issued. Upon such authentication, delivery and issue, the Obligations shall be binding upon the Financing Agency as though those officers who signed and sealed the same had continued to be officers of the Financing Agency. Upon the execution and delivery of this Indenture, the Financing Agency shall execute and deliver the Obligations to the Trustee for authentication.

Section 2.03 Authentication of Obligations

No Obligation and no coupons shall be valid or entitled to any right or benefit unless the Trustee shall endorse and execute on the Obligation a certificate of authentication substantially in the form of the Certificate of Trustee in Exhibit A. A Certificate of Trustee upon any Obligation executed on behalf of the Financing Agency shall be conclusive evidence that the Obligation has been duly issued under this Indenture and that the Holder thereof is entitled to the benefits of this Indenture.

The Trustee shall not authenticate and deliver the initial Obligations to be issued and delivered pursuant to the Indenture unless the Trustee has received the following:

(a) A certified copy of the resolution of the Financing Agency authorizing the issuance of the Obligations and the execution and delivery of the Indenture; and

(b) A certified copy of the resolution of the Financing Agency, specifying the interest rate of said Obligations, directing the authentication and delivery of the Obligations to or upon the order of the purchaser or purchasers named therein upon payment of the purchase price set forth plus accrued interest on the Obligations; and

(c) An opinion of Bond Counsel for the Financing Agency, stating that (1) the issuance of the Obligations and the execution of this Indenture have been duly authorized; (2) all conditions precedent to the delivery of said Obligations have been fulfilled, and (3) the Obligations and this Indenture are valid and binding obligations in accordance with their terms.

Before authenticating any coupon Obligations, the Trustee shall detach and

cancel all matured coupons, if any. No Obligations shall be authenticated by the Trustee except in accordance with this Section and Section 2.08 hereof.

Section 2.04 Negotiability and Transfer of Obligations

All coupon Obligations shall be negotiable and transferable by delivery, unless registered as to principal in the manner hereinafter provided.

All transfers, registrations and discharges from registration of Obligations pursuant to this Section 2.04 or Section 2.05 shall be made under such reasonable requirements as the Trustee may prescribe and shall be without expense to the Holders of the Obligations; except that any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder requesting such transfer, registration or discharge from registration as a condition precedent to the exercise of such privilege.

Section 2.05 Registration of Obligations

As long as any of the Obligations issued shall remain outstanding, the Financing Agency shall maintain and keep at the office of the Trustee, an office or agency for the payment of the principal and interest on the Obligations, as provided in this Indenture, and for the registration and transfer of the Obligations. The books for registration and transfer shall be kept at the office of the Trustee. The Financing Agency does hereby appoint the Trustee (and its successors) as its agent to maintain this office and agency at the office of the Trustee. Any coupon Obligation may be registered on these books as to principal, upon presentation thereof at the office of the Trustee, and such registration shall be noted on the Obligation. After registration, no transfer thereof shall be valid unless made on these books at the request of the registered Holder or his duly authorized agent in writing and similarly noted on such Obligation. A coupon Obligation may be discharged from registration by its registration to bearer and thereupon transferability by delivery shall be restored. The Obligation may be registered or be transferred to bearer as before. Registration of any coupon Obligation shall not affect the negotiability of the coupons relating to the Obligation, but every such coupon shall continue to pass by delivery and shall remain payable to bearer. Payment to bearer shall fully discharge the Financing Agency and the Trustee of the interest therein mentioned, whether or not the Obligation is registered as to principal.

Section 2.06 Ownership of Obligations

As to any registered Obligation, the Financing Agency and the Trustee, and their respective successors, each in its discretion, may deem and treat the person in whose name the Obligation shall be registered as the absolute Holder thereof for all purposes, except for the purpose of receiving payment of the coupons, if any. Neither the Financing Agency nor the Trustee nor their respective successors, shall be affected by any notice to the contrary. Payment of, or on account of, the principal of any such Obligation shall be made only to or upon the order of the registered Holder thereof, but the registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Obligation to the extent of the sum or sums so paid. The Financing Agency and the Trustee may deal with the bearer of any coupon Obligation or coupon as the absolute owner of such Obligation or coupon for all purposes including payment whether or not the Obligation shall be overdue. The Financing Agency and the Trustee shall not be affected by any notice to the contrary.

Section 2.07 Validity of Obligations

All Obligations executed, authenticated and delivered as provided in this Indenture shall be the valid obligations of the Financing Agency and shall be entitled to all of the benefits of this Indenture.

Section 2.08 Reissuance of Mutilated, Destroyed, Stolen or Lost Obligations

In case any outstanding Obligation is mutilated, destroyed, stolen, or lost, the Trustee shall authenticate and deliver a new Obligation (with appropriate coupons attached in the case of a coupon Obligation) of like tenor, number and amount as the Obligation and appurtenant coupons. The Holder shall surrender the mutilated Obligation and related coupons in exchange and substitution. However, if the Obligation or coupons are destroyed, stolen or lost, the Holder shall file with the Trustee evidence satisfactory to the Financing Agency and the Trustee that the Obligation and related coupons (if any) have been destroyed, stolen or lost and proof of ownership thereof. The Holder shall furnish the Financing Agency and the Trustee with indemnity satisfactory to them, complying with such other reasonable requirements as the Financing Agency and the Trustee may prescribe, and shall pay such expenses as the Financing Agency and Trustee may incur.

Article III—Redemption of Obligations

Section 3.01 Redemption of Obligations Generally

The Obligations shall be subject to redemption or prepayment prior to maturity in the event of total or partial early redemption of the GNMA Securities and under certain other circumstances as directed by HUD, and further provided in Article IV. All Obligations of this issue are subject to redemption at the principal amount plus accrued interest. In the event of partial early redemption, the following schedule shall be followed:

Section 3.02 Publication of Notice

Notice of intention to redeem (including, when only a portion of the Obligations are to be redeemed, the numbers of such Obligations, or principal installments thereof) shall be given by or on behalf of the Financing Agency by publication at least once not less than thirty nor more than sixty days before the redemption date in a daily newspaper of general circulation and a financial journal published and of general circulation in the City of New York, New York; and a similar notice shall also be mailed by or on behalf of the Financing Agency not less than thirty nor more than sixty days before the redemption date by certified or registered mail, to the registered Holders of any Obligations registered as to principal which are to be redeemed, at the last addresses appearing upon the registration books of the Financing Agency. Mailing of the notice shall not be a condition precendent to redemption if publication of the notice of redemption is duly made. Failure to mail the notice shall not affect the validity of the proceedings for the redemption of the Obligations. In the event that all of the Obligations being redeemed are fully registered Obligations or coupon Obligations registered as to principal, the notice of intention to redeem need not be published but shall be deemed to have been sufficiently given if mailed by certified or registered mail to each registered Holder of the Obligations at the address of the Holder as it appears upon the Obligation Register maintained by the Trustee. Notice of redemption is not required if the Holders of all Obligations called for redemption waive notice thereof in writing and this waiver if filed with the Trustee.

Section 3.03 Pavement of Redeemed Obligations

After notice of redemption is given as provided in Section 3.02, the Obligations specified in the notice, or the installments of principal to be prepaid, shall become due and payable on the redemption date. Payment of the redemption price and interest shall be made to the bearers of the Obligations, unless they shall then be registered, in which case such payment shall be made to or upon order the registered Holder. In the case of coupon Obligations, payment shall be made only upon the surrender of the Obligations together with any unmatured coupons. In the case of a fully registered Obligation, payment shall be made only upon presentation of the Obligation for notation of the payment. If monies are available for the payment of all of the Obligations or installments of principal plus accrued interest as are called for redemption on the redemption date, the Obligations or installments of principal shall cease to draw interest after the redemption date, and any related coupons maturing after that date shall be void and the Obligations shall not be deemed to be outstanding hereunder for any purpose. The Holders, upon presentation as provided, shall be entitled to receive payment of the redemption price and interest accrued up to the redemption date from the monies set aside by the Trustee. All unpaid interest installments represented by coupons which have matured on or prior to the redemption date shall continue to be payable to the bearers and those coupons may be presented for payment in the usual manner and the notice of redemption may so state.

Section 3.04 Cancellation of Redeemed Obligations

All Obligations redeemed in full under the provisions of this Article, together with related coupons (if any), shall immediately be cancelled and destroyed by the Trustee. A certificate of destruction shall be furnished to the Financing Agency by the Trustee and no Obligation shall be executed, authenticated, or issued in exchange or substitution.

Article IV—Establishment and Application of Funds, Escrow and Accounts

Section 4.01 Trust Estate

(a) The Financing Agency shall deposit or cause to be deposited the proceeds from the Obligations and any and all other monies received pursuant to the Indenture which jointly comprise the Trust Estate and shall be placed in the escrow and funds established under this Article. The Trust Estate in its entirety is pledged for the benefit of the Holders and a lien on he Trust Estate is created by this Indenture in favor of the Holders.

(b) Amounts withdrawn and paid out of the Trust Estate according to the provisions of this Article shall no longer be subject to the pledge and lien created by this Indenture.

Section 4.02 Obligation Proceeds Fund

(a) The Trustee shall establish an Obligation Proceeds Fund in which there shall be deposited all the proceeds from the sale of the Obligations, including accrued interest thereon. The monies in the Obligation Proceeds Fund shall be invested in Permitted Investments.

(b) Monies in the Obligation Proceeds Fund shall be applied by the Trustee for the following purposes and in the following priority:

(i) To transfer immediately to the Debt Service Reserve Fund monies equal to one month's debt service on the Obligations; and

(ii) To transfer monies to the Interest Account to the extent there are insufficient monies in the Interest Account to pay interest on the Obligations; and

(iii) To purchase, upon receipt of evidence satisfactory to the Trustee under the Agreement, in the name of the Financing Agency as registered owner, GNMA Mortgage-Backed Securities (CLCs and PLC) on such dates and at such prices, plus accrued interest thereon, as shall, from time to time, be required in connection with the issuance of such CLCs and PLC by the GNMA Issuer; and

(iv) To transfer all monies to the Redemption Fund in the event a PLC cannot be issued within the maturity period of the CLCs.

(c) After issuance of the PLC, any remaining monies in the Obligation Proceeds fund shall be transferred, first, to the Debt Service Reserve Fund, in an amount necessary to create in that Fund a total amount equal to two month's debt service on the Obligations; and, second, to the Surplus Fund.

Section 4.03 Debt Service Reserve Fund

(a) The Trustee shall establish a Debt Service Reserve Fund to ensure timely payment of principal and interest on the Obligations.

(b) Monies equal to one month's debt service on the Obligations shall be transferred from the Obligation Proceeds Fund.

(c) If income on Permitted Investments of the initial deposit into the Fund has not accumulate an amount equal to a second month's debt service by the time the PLC is issued, monies equal to a second one month's debt service on the Obligations shall be transferred from the Obligations Proceeds Fund out of earnings on Permitted Investments from that Fund, or, if insufficient, from monies in the Surplus Fund.

(d) Monies in the Debt Service Reserve Fund, including investment income earned on the Permitted Investment of these monies, shall be transferred to the Principal and Interest Accounts to the extent needed to carry out the purposes of those accounts, provided that the Trustee shall first use for those purposes any monies in the Obligation Proceeds Fund (for interest only) and the Surplus Fund.

(e) If income from Permitted Investments increases the Debt Service Reserve Fund to an amount in excess of two month's debt service on the Obligations, the excess is to be transferred to the Surplus Fund.

Section 4.04 Custodial Escrow

(a) The Trustee shall establish a Custodial Escrow as a non-monetary escrow. All CLCs and the PLC shall be placed in the Custodial Escrow upon purchase.

(b) No CLC or PLC shall be sold, transferred or otherwise disposed of except in accordance with the Indenture, the Agreement and the GNMA Guaranty Agreements.

Section 4.05 Cost of Issuance Fund

(a) The Trustee shall establish a Cost of Issuance Fund to pay costs of issuance that are the responsibility of the Financing Agency. The portion of the 3-½ per centum included in the mortgage that the Mortgagee is obligated to pay to the Trustee and the Financing Agency pursuant to the Agreement and such additional amounts as the Mortgagor has agreed to pay as costs of issuance shall be deposited in this Fund.

(b) The Trustee shall disburse monies from this Fund to pay costs of issuance in the amounts specified in the Agreement upon recepit of requisitions showing the purposes for which such monies have been expended and a detailed breakdown of amounts. Any monies remaining in this Fund after payment of all HUD approved costs shall be transferred to the Surplus Fund.

Section 4.06 Principal and Interest Sinking Fund

(a) The Trustee shall establish a Principal and Interest Sinking Fund comprised of an Interest Account and a Principal Account. Regular monthly installments of interest on the CLCs and of principal and interest on the PLC received by the Trustee under the Agreement with the GNMA Issuer (or from GNMA, in the event of a default by the GNMA Issuer) shall be deposited in the respective accounts. All monies in the Fund shall be invested in Permitted Investments to the extent possible and investment income shall be used for the purposes of the respective Principal and Interest Accounts as necessary.

(b) Monies in the Interest Account shall be applied by the Trustee for the payment of interest on the Obligations.

(c) Monies in the Principal Account shall be applied by the Trustee for the payment of interest on the Obligations only if monies in the Interest Account are not adequate for such purpose; otherwise, monies in the Principal Account shall be used in the payment of principal on the Obligations.

(d) If there are insufficient monies in these Accounts to pay any required payment of interest or principal, the Trustee may transfer monies as necessary first from the Obligation Proceeds Fund (for interest only), second from the Surplus Fund, and third from the Debt Service Reserve Fund.

(e) Monies in these Accounts in excess of the amount the Trustee determines to be necessary to pay scheduled interest and principal for the next semiannual period shall be transferred to the Surplus Fund.

Section 4.07 Obligation Servicing Fee Fund

(a) The Trustee shall establish an Obligation Servicing Fee Fund and shall pay from this Fund the Oligation servicing fee approved by HUD. The Trustee shall maintain records showing the purposes for which such monies were expended and a detailed breakdown of the amounts. No other monies are to be withdrawn from such fund or paid or transferred to the Trustee or Financing Agency except where explicitly approved in writing by HUD.

(b) The Trustee is directed to collect and deposit in the Obligation Servicing Fee Fund those amounts which are approved by HUD as project expenses and out-of-pocket expenses by the Mortgagor. The Trustee is authorized as approved in writing by HUD to transfer any additional monies necessary to fund the Obligation Servicing Fee Fund from the following sources to the extent the collected amounts are inadequate: (1) income from Permitted Investments in the Obligation Proceeds Fund, until issuance of the PLC; and (2) the Surplus Fund, after issuance of the PLC.

Section 4.08 Surplus Fund

(a) The Trustee shall establish a Surplus Fund for the deposit of monies transferred from other funds and accounts as provided in this Article.

(b) In the event there is an inadequate amount in the Obligation Servicing Fee Fund or the Principal and Interest Sinking Fund to carry out the purposes of these Funds, the Trustee may transfer monies from the Surplus Fund. To the extent funds have been expended from the Debt Service Reserve Fund, the Trustee shall transfer monies from the Surplus Fund to the Debt Service Reserve. No other use of monies in the Surplus Fund is permitted without the prior written approval of HUD.

(c) If there is no default in payment of principal and interest and the Debt Service Reserve Fund is fully funded, upon the written direction of the Assistant Secretary for Housing, the Trustee shall transfer or pay any amounts in the Surplus Fund as directed in writing by HUD.

Section 4.09 Redemption Fund

(a) The Trustee is authorized to establish a Redemption Fund for receipt of monies resulting from the following:

(i) Prepayment in whole or in part of the CLCs or PLC;

(ii) Scheduled full payment of the CLCs or PLC;

(iii) Transfers into this Fund from the Surplus Fund as directed in writting by HUD.

(b) If the monies deposited in this Fund do not represent full payment under the outstanding CLCs or PLC, the Trustee shall apply the monies received to an early prepayment of the principal amount of the Obligations in accordance with Article III of this Indenture if directed in writing by HUD.

(c) If the monies deposited in this Fund represent full payment (whether early or scheduled) under the outstanding CLCs or the PLC, the Trustee shall also transfer all monies in any other funds and accounts under this Indenture to the Redemption Fund and shall apply all monies in this Fund in the following order or priority:

(i) Payment of the Obligation Servicing Fee due the Trustee, including the reasonable expenses of winding down the Trust Indenture and the Financing Agency;

(ii) Payment of any accrued but unpaid interest on the Obligations;

(iii) Payment of the outstanding principal of the Obligations;

(iv) Payment of any remaining funds to HUD.

Article V—Covenants of the Financing Authority

The Financing Agency covenants and agrees that:

Section 5.01 Payment of Obligations

It shall faithfully perform all covenants contained in this Indenture and in each and every Obligation executed, authenticated and delivered hereunder; that it will promptly pay on the dates and in the places and manner prescribed in the Obligations, the principal of and interest on every Obligation issued hereunder in any coin or currency which, on the respective dates of payment of such principal and interest, is legal tender for the payment of debts due the United States of America, and that it will, prior to the due date of each installment of interest and principal on a fully registered Obligation, and prior to the maturity of each coupon Obligation and each annexed coupon, as the case may be, at the times and in the manner prescribed herein, deposit or cause to be deposited with the Trustee, the amounts of money specified herein, so that the Trustee may make timely payment.

Section 5.02 Extension of Payments of Obligations and Coupons

It shall not directly or indirectly extend or assent to the extension of (1) the maturity of any of the Obligations or installments of principal of any fully registered Obligation, (2) the time of payment of any of the coupons or (3) claims for interest by the purchase or refunding of such Obligations, principal installments, coupons or claims for interest or by any other arrangement. In the event the maturity of any of the Obligations or installments of principal, or the time for payment of any of the coupons or claims for interest shall be extended, those Obligations, principal installments, coupons or claims for interest shall not be entitled to the benefit of this Indenture or to any funds held by the Trustee unless (i) the funds are held in the Trust Estate by the Trustee for the payment of these particular Obligations, principal installments, coupons or claims for interest pursuant to the Indenture or (ii) there has been prior payment of the principal and accured interest on all Obligations, principal installments, coupons and claims for interest that have not been so extended.

Section 5.03 Agency of the Financing Agency.

It is duly authorized under its Charter and the laws of the State in which it is situated to create and issue the Obligations and to execute this Indenture; that all corporate action on its part for the creation and issuance of the Obligations and the execution and delivery of this Indenture has been duly and effectively taken; and that the Obligations in the hands of the Holders and owners thereof are and will be valid and enforceable obligations of the Financing Agency.

Section 5.04 Recording of Indenture

This Indenture shall be filed, registered and recorded in such manner and at such places as may be required by law to protect fully the security of the Holders of the Obligations and the right, title and interest of the Trustee in and to the Trust Estate or any part thereof. The Financing Agency shall perform or cause to be performed any other act as provided by law, and it shall execute or cause to be executed any and all other instruments which shall reasonably be requested by the Trustee and approved by HUD. The Financing Agency shall pay as part of the Cost of Issuance all recording and registration taxes and fees, together with all expenses incidental to the preparation, execution, acknowledgement, filing, registering and recording of this Indenture and of any instrument of further assurance, and all stamp taxes and other taxes, duties, imposts, assessments and charges imposed upon the Obligations or upon this Indenture.

Section 5.05 Maintain Corporate Existence

Until the Obligations secured hereby and the interest thereon shall have been paid or provision for such payment shall have been made, it will maintain, extend and renew its corporate existence under the laws of the State in which it is incorporated and in which it is situated. The Financing Agency will not do anything or permit any act whereby its right to transact its functions may be terminated or its operations and activities restricted or payment of the Obligations delayed or prevented.

Section 5.06 Maintain List of Holders of Obligations

To the extent that such information shall be made known to the Financing Agency or the Trustee under the terms of this Section, it will keep or cause to be kept on file at the Office of the Trustee a list of names and addresses of the last known Holders of all Obligations outstanding hereunder with the principal amount of Obligations held by each. Any Holder may require his name and address to be added to said list by filing a written request with the Financing Agency or the Trustee, which request shall include a statement of the principal amount of Obligations held by such Holder and the serial numbers of such Obligations. The Trustee shall be under no responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations established by the Trustee, the list may be inspected and copied by any Holder, or authorized agent thereof, owning ten per centum or more in principal amount of Obligations outstanding. Evidence of ownership and the authority of any agent shall be satisfactory to the Trustee.

Article VI—Default

Section 6.01 Events of Default

Each of the following events is hereby defined as, and is declared to be, an "event of default":

(a) If payment of the principal or any installment of prinicipal of any of the Obligations shall not be made when due and payable, or within thirty days thereafter, whether at maturity, by proceedings for redemption, by declaration, or otherwise;

(b) If payment of any installment of interest shall not be made when due and payable, or within sixty days thereafter;

(c) If the Financing Agency shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Obligations or in this Indenture, or in any amended or supplemental indenture, provided the default continues for a period of sixty days after written notice from the Trustee to the Financing Agency specifying the event of default;

(d) If the Financing Agency (1) is generally not paying its debts as they become due, or (2) files a petition in bankruptcy, or (3) files an answer seeking reorganization or (4) makes an assignment for the benefit of its creditors, or (5) consents to or fails to contest: (i) the appointment of a trustee in bankruptcy or (ii) the appointment of, or possession by, a trustee, receiver or agent of substantially all of the property of the Financing Agency for the purpose of enforcing a lien against such property; and such action shall not be cured or vacated within 60 days.

(e) If a court of competent jurisdiction shall enter an order, judgment or decree ordering relief in bankruptcy against the Financing Agency or appointing a trustee of the Financing Agency, or of its bankruptcy estate and such order, judgment or decree shall not be vacated or set aside or stayed within sixty days from the date of the entry thereof;

(f) If under the Mortgage there is a default giving the Mortgagee the right to make a claim under the Contract of Mortgage Insurance, which default would result in an early recovery of principal by the Trustee under the GNMA Securities.

Section 6.02 Acceleration of Maturity

Upon receipt of an early recovery of principal after a default under Section 6.01(f), the Trustee shall declare the principal of all Obligations plus accrued interest immediately due and payable and shall deliver written notice to the Financing Agency.

Section 6.03 Enforcement of Covenants and Conditions

In the event of defaults under Section 6.01(a-c) involving the breach of the covenants or conditions of this Indenture, the Trustee (subject to the provisions of Section

6.06 and Article VII) shall pursue appropriate actions for the enforcement of its rights and the rights of the Holders as due diligence, prudence and care would require including possible proceedings at law or in equity to enforce payment of the Obligations then outstanding.

Section 6.04 Proceedings Affecting Financing Agency

In the event a default under subsections (d) or (e) of Section 6.01 the Trustee, without prejudice to or waiver of the lien and security of this Indenture, shall be entitled to file proof of a claim for the entire amount then due and payable by the Financing Agency under this Indenture. The Trustee is appointed the agent and attorney of the Holders of all Obligations outstanding hereunder for such purpose.

Section 6.05 Right to Act without Possession of Obligations

All rights of action (including the right to file proof of claim) under this Indenture or under any of the Obligations or coupons, may be enforced by the Trustee without the possession of any of the Obligations or coupons or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Holders. Any recovery or judgment shall be for the equal benefit of the Holders of the outstanding Obligations and coupons, subject to the provisons of Article V hereof with respect to extended Obligations, principal installments, coupons and claims for interest.

Section 6.06 Limitation on Suits by Holders

No Holder of any Obligation or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred and the Trustee has been notified or is deemed to have notice. The holders of twenty-five per centum in aggregate principal amount of Obligations outstanding under this Indenture shall (a) make written request to the Trustee offering it reasonable opportunity either to proceed to exercise its powers or to institute such action, suit or proceeding in its own name, and (b) offer to indemnify the Trustee as provided hereinafter. The notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for any appropriate remedy hereunder. No one or more Holders of the Obligations or coupons shall have any right to affect, disturb or prejudice the lien of this Indenture by their action or to enforce any right hereunder except as provided in this Section. All proceedings at law or in equity shall be instituted and maintained in the manner herein provided and for the equal benefit of the Holders of all Obligations outstanding hereunder. Nothing in this Indenture shall, however, affect or impair the absolute and unconditional right of any Holder to enforce the payment of the principal of and interest on any Obligation at and after the maturity thereof. In the event of any action under this Section, it is no longer the absolute and unconditional obligation of the Financing Agency to pay the principal of and interest on each of the Obligations issued hereunder to the respective Holders at the time and place stated in said Obligations.

Section 6.07 Waiver by Holders

The Trustee, upon the written request of the Holders of not less than fifty-one per centum in principal amount of the outstanding Obligations, may waive any default under Sections 6.01(b–e). However, a default in the payment of interest on the Obligations under Section 6.01(b) shall not be waived unless, prior to such waiver, all arrears of interest and all expenses of the Trustee shall have been paid or shall have been provided for by deposit with the Trustee of a sum sufficient to pay the same. In case of any waiver under this Section, the Financing Agency, the Trustee, and the Holders of the Obligations shall be restored to their former positions and rights respectively.

Section 6.08 Remedies Cumulative, Delay Not To Constitute Waiver

No remedy conferred upon or reserved to the Trustee or to the Holders in this Indenture is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default under the Indenture whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent or other default.

Section 6.09 Restoration of Rights Upon Discontinuance of Proceedings

In case the Trustee shall have proceeded to enforce any right under this Indenture and the proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Financing Agency and the Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.10 Notice of Default for Insufficient Funds

The Trustee shall mail written notice to all Holders (who shall have filed their names and addresses with the Trustee for such purpose), of the occurrence of any event of default under Section 6.01(a–b) of this Article within thirty (30) days after any such event of default shall have occurred. If in any fiscal year the total amount of deposits to the credit of the Principal and Interest Sinking Funding Account shall be less than the amounts required to be so deposited under the provisions of this Indenture, the Trustee, on or before the first day of the second month of the next succeeding fiscal year, shall mail to all Holders (who have filed their names and addresses with the Trustee for such purpose) HUD, and the Financing Agency, a written notice of the failure to make such deposits. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail any notice required by this Section.

Article VII—Rights and Duties of the Trustee

Section 7.01 Acceptance of Trust and Promise of Prudent Performance

The Trustee accepts the trusts and assumes the duties imposed and created by this Indenture.

(a) The Trustee expressly covenants and agrees to hold the GNMA Securities until the Securities are redeemed or prepaid by the GNMA Issuer.

(b) The Trustee shall, prior to an event of default as defined in Section 6.01, and after the curing of all events of default which may have occurred, perform only the duties specifically set forth in this Indenture. The Trustee shall, during the existence of any event of default (which has not been cured), exercise its rights and powers under this Indenture and exercise the same prudent care and skill as would a reasonable man.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, or omissions or its own willful misconduct, except

(1) as provided in Section 7.02; and

(2) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee unless it shall be provided that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action taken or omitted by it in good faith in accordance with the direction of the Holders as provided in this Indenture.

(d) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 Reliance Upon Certain Documents and Opinions

(a) The Trustee may rely and shall be protected in acting upon the truth and correctness of any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties; except that the Trustee shall be under a duty to examine any documents required by this Indenture to determine whether the documents conform to the requirements of this Indenture

(b) Any request, direction, election, order or demand of the Financing Agency shall be sufficiently evidenced by an instrument signed in the name of the Financing Agency by its chief administrative officer, and any resolution of the Financing Agency may be

evidenced to the Trustee by a certified Resolution

(c) The Trustee may consult with counsel (who may be counsel for the Financing Agency) and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by the Trustee hereunder in good faith and in accordance with the opinion of such counsel

(d) Whenever, in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matter may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Financing Agency. Said Certificate of the Financing Agency shall, in the absence of negligence or bad faith on the part of the Trustee, be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Indenture.

Section 7.03 Responsibility for Validity of Statements and Documents

The Trustee shall not be responsible for: any recital or statement herein or in said Obligations and coupons (except the certificate of the Trustee endorsed on such Obligations), the recording or re-recording, filing or refiling of this Indenture, the affixing or cancellation of any revenue stamps, the validity of the execution of this Indenture by the Financing Agency, any supplemental indenture or instrument of further assurance, or for the sufficiency of the security for the Obligations issued hereunder or intended to be secured hereby. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenant, condition or agreement on the part of the Financing Agency, except as specifically set forth in this Indenture, but the Trustee may require of the Financing Agency full information and advice as to the performance of any covenants, conditions and agreements. The Trustee shall not be accountable for the use or proceeds of any Obligations authenticated or delivered hereunder.

Section 7.04 Limits on Duties and Liabilities

(a) Any discretionary power of the Trustee under this Indenture shall not be construed as a duty of the Trustee and the Trustee shall be answerable only for its own negligence or willful default.

(b) The Trustee shall be under no obligation to: institute any suit, take any proceeding under this Indenture, enter any appearance or in any way defend in any suit in which it may be made defendant, take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified by the Financing Agency or the Holders to its satisfaction against any and all costs, expenses, counsel fees and other reasonable disbursements, and against all liability.

Section 7.05 Notice to Financing Agency

Any notice or demand which is required or permitted to be given * * * by the trustee to the * * * Financing Agency shall be deemed to have been sufficiently given if sent by registered mail, addressed to the Financing Agency at the address given to the Trustee in writing.

Section 7.06 Responsibilities in Event of Default

(a) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder, except default in the deposits or payments specified herein, or failure by the Financing Agency to file with it any of the documents required, unless the Trustee shall be specifically notified in writing of such default by the Financing Agency or by the Holders of at least twenty-five per centum in aggregate principal amount of Obligations outstanding. All notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume that there is no default, except as aforesaid.

(b) If an event of default occurs of which the Trustee is by the preceding paragraph required to take notice or if notice of dafault be given it, then the Trustee shall give written notice thereof by mail to the Holders of all Obligations outstanding hereunder as they are known by both the Obligation Register and the list of Holders required to be kept at the office of the Trustee.

Section 7.07 Intervention in Judicial Proceedings Involving Financing Agency

In any judicial proceeding to which the Financing Agency is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of Obligations issued hereunder, the Trustee may intervene on behalf of Holders and shall do so if requested in writing by the Holders of at least twenty-five per centum of the aggregate principal amount of Obligations outstanding and if the Trustee is indemnified as provided in Section 7.04.

Section 7.08 Further Investigations

The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts as provided in Section 7.02. However, the Trustee may, in its unrestricted discretion, and shall, if requested in writing so to do by the Holders of not less than twenty-five per centum in aggregate principal amount of Obligations outstanding hereunder, cause to be made such independent investigation as it may see fit, and in that event may decline to take any action otherwise required unless satisfied by such investigation of the truth and accuracy of the matters so investigated. The expense of such investigation shall be paid by the Financing Agency or, if paid by the Trustee, shall be repaid by the Financing Agency upon demand with interest at the FHA maximum rate for multifamily mortgages in effect at the time the investigation is completed.

Section 7.09 Compensation

The Trustee shall have a first lien on all monies in the Obligation Proceeds Fund and on the Surplus Fund for reasonable compensation, expenses, advances and counsel fees approved by HUD and incurred in the execution of the trusts and the exercise and performance of the powers and duties of the Trustee and the cost and expense in defending against any liability (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee). The Financing Agency hereby covenants and agrees to pay all advances, counsel fees and other expenses reasonably made or incurred by the Trustee in the execution of the trust hereby created and to reimburse the Trustee for the Trustee's actual expenses. The Financing Agency agrees to pay the Trustee reasonable compensation for its services as approved by HUD.

Section 7.10 Agency to Hold Obligations

The Trustee and its officers and directors may acquire and hold, or become the pledgee of, Obligations.

Section 7.11 Appointment

At all times there shall be a Trustee which shall be a corporation organized and doing business under the laws of the State in which the Financing Agency is situated and shall be authorized under such laws to exercise corporate trust powers. If the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner specified in Section 7.13.

Section 7.12 Merger

Any corporation or association into which the Trustee may be converted, merged, or consolidated, or to which it may sell or transfer its trust business and assets, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer, shall become successor trustee, vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor.

Section 7.13 Resignation or Removal

The Trustee may resign and be discharged from the trusts created by this Indenture by giving to the Financing Agency thirty days' notice in writing, and to the Holders notice by publication, of such resignation, specifying a date when such resignation shall take effect. The notice shall be published at least once a week for two successive weeks in a financial journal published and of general circulation in the City of New York, New York. The resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall have been appointed by the Holders or the Financing Agency, in which event such discharge shall take effect immediately on the appointment of such successor trustee.

Any Trustee may be removed at any time by an instrument in writing, appointing a successor to the Trustee so removed, filed with the Financing Agency and the Trustee and executed by the Holders of a majority of the principal amount of the outstanding Obligations.

Section 7.14 Appointment of Successor Trustee

In the event the Trustee shall resign, be removed, become incapable of acting, or be adjudged a bankrupt or insolvent, or be the

subject of an order for relief in bankruptcy, or if a receiver or trustee in bankruptcy of the Trustee or of its property shall be appointed, or if a public officer or officers shall take charge or control of the Trustee or of its property or affairs, a vacancy in the office of Trustee shall result. A successor may be appointed by the Holders of a majority of the principal amount of the outstanding Obligations by filing a written instrument with the Trustee and the Financing Agency. Until a new trustee shall be appointed by the Holders, the Financing Agency, by an instrument executed by order of its Board shall appoint an acting trustee to fill such vacancy. After any such appointment by the Financing Agency, notice of such appointment shall be published at least once within thirty days of such appointment in a financial journal published and of general circulation in the City of New York, New York. Any acting trustee appointed by the Financing Agency shall immediately and without further act be superseded by a trustee appointed by the majority of the Holders.

If an appointment of an acting or a successor trustee is not made immediately after a vacancy occurs, the Holder of any Obligation hereby secured or HUD may apply to a court of competent jurisdiction for the immediate appointment of a successor trustee.

Section 7.15 Transfer of Rights and Property to Successor Trustee

Every successor trustee appointed hereunder, shall execute, acknowledge and deliver to its predecessor and to the Financing Agency, a written acceptance of the appointment. Thereafter, the successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Financing Agency, or of its successor, execute and deliver an instrument transferring to such successor all the Trust Estate, properties, rights, powers and trusts of such predecessor. The predecessor trustee shall deliver the entire Trust Estate to the successor. The Financing Agency shall deliver any instrument in writing required by any successor trustee. The resignation of any trustee and the instrument or instruments removing a trustee and appointing a successor hereunder, together with all instruments provided for in this Article shall immediately, at the expense of the Financing Agency, be filed and/or recorded by the successor trustee in each recording office where this Indenture shall have been filed and/or recorded.

Article VIII—Acts of Holders

Section 8.01 Execution of Instruments by Holders

Any request, direction, consent or other instrument in writing required by this Indenture to be signed or executed by Holders may be signed or executed by the Holders in person or by an agent duly appointed by written instrument. Proof of the execution of any such instrument and of the ownership of Obligations shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who legally has power to take acknowledgements of deeds to be recorded within such jurisdiction, to the effect that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such an execution.

(b) Proof that a Holder holds Obligations hereunder, the amount, the serial numbers of such Obligations, and the date of his holding the same (unless such Obligations be registered) may be proved by the affidavit of the person claiming to be the Holder or by a certificate issued by any trust company, bank, banker or any other depository wherever situated. The certificate shall show that, at the date therein mentioned, the Holder had on deposit with such trust company, bank, banker or other depository the obligations described in such certificate. The Financing Agency and the Trustee may nevertheless, in their separate discretion, require further proof in cases where either of them shall deem further proof desirable.

(c) The ownership of fully registered Obligations and of coupon Obligations registered as to principal shall be proved by the registration books kept under the provisions of this Indenture.

Section 8.02 Waiver of Notice

Any notice or other communication required by this Indenture to be given by delivery, publication or otherwise to the Holders may be waived, before any notice or communication is required to be given, by a writing mailed or delivered to the Trustee by the Holders of all of the Obligations entitled to such notice or communication.

Section 8.03 Holder's Meeting

A meeting of the Holders may be called at any time for any of the following purposes:

(1) to give notice to the Financing Agency or to the Trustee, to give any direction to the Trustee, to make any request of the Trustee, to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article VI hereof;

(2) to remove the Trustee or appoint a successor Trustee pursuant to the provisions of Article VII hereof;

(3) to consent to the execution of an amendment to this Indenture or a supplemental indenture; or

(4) to take any other action authorized to be taken by or on behalf of the Holders under any other provision of this Indenture or under applicable law.

Article IX—Defeasance

Section 9.01 Payment and Discharge of Indenture

(a) The entire residue of the Trust Estate shall revert to HUD and all remaining rights of the Trustee and Holders shall cease if the Financing Agency, its successors or assigns, with the prior written approval of HUD shall:

(i) pay or cause to be paid all the principal and interest on the Obligations at the time and in the manner stipulated in the Obligations;

(ii) provide for the payment of principal of the Obligations and interest thereon by depositing or having deposited in cash with the Trustee in a Redemption Fund at or at any time before maturity the entire amount due or to become due for principal of all said Obligations outstanding;

(iii) deliver to the Trustee (1) proof satisfactory to the Trustee that notice of redemption of all of the outstanding Obligations not surrendered or to be surrendered to it for cancellation has been given as provided in Article III hereof, or that arrangements satisfactory to the Trustee have been made insuring that such notice will be given, or (2) a written irrevocable instrument executed by the Financing Agency under its corporate seal, authorizing the Trustee to give such notice for and on behalf of the Financing Agency, and in any such case, deposit, cause to be deposited or ascertain that there has been deposited with the Trustee before the date on which such Obligations are to be redeemed, the entire amount of the redemption price, including accrued interest; or

(iv) surrender to the Trustee for cancellation all Obligations and coupons, for which payment is not so provided and shall also pay all other sums due and payable hereunder by the Financing Agency.

(b) Upon the cancellation of all Obligations and coupons for the payment of which cash shall not have been deposited in accordance with the provisions of this Indenture, the Trustee upon receipt of a written request and certificate of the Financing Agency, and an opinion of counsel and at the cost and expense of the Financing Authority, shall execute to the Financing Agency or its order, instruments acknowledging satisfaction of this Indenture and surrender to HUD all remaining cash and deposited securities which shall then be held hereunder as a part of the Trust Estate.

Section 9.02 Obligations and Coupons Deemed Not Outstanding After Deposits

When there shall have been deposited with the Trustee funds sufficient to pay the principal of all outstanding Obligations together with all interest due to the date of maturity or redemption, then upon this deposit all such Obligations and coupons shall cease to be entitled to any lien, benefit or security of this Indenture except the right to receive the funds so deposited. Such Obligations and/or coupons shall be deemed not to be outstanding hereunder and it shall be the duty of the Trustee to hold the funds so deposited for the benefit of the Holders of such Obligations or coupons. From and after the redemption or maturity date, interest on such Obligations or portions thereof called for redemption shall cease to accrue.

Article X—Amendments and Supplemental Indentures

Section 10.01 Purposes

The Financing Agency (when authorized by a resolution of its Board and when approved in writing by HUD) and the Trustee at any

time may enter into amendments or supplemental indentures, for any of the following purposes:

(a) to add to the covenants and agreements of the Financing Agency in this Indenture, or to surrender any right or power herein reserved to or conferred upon the Financing Agency or its successor;

(b) to evidence any successor to the Financing Agency and the assumption of the covenants, agreements and obligations of the Financing Agency by such successor;

(c) to cure any ambiguity, or to correct or supplement any provision contained herein or in any supplemental indentures which shall not be inconsistent with or impair the security of this Indenture or any supplemental indenture;

(d) to provide for the issue of any additional tax-exempt obligations pursuant to the applicable HUD regulations;

(e) to evidence any modifications of this Indenture authorized by the Holders pursuant to the provisions of Section 10.06; and

(f) to provide for the purchase of additional GNMA Securities as a result of increased costs in connection with the construction of the project if (1) such costs are shown to be reasonable to HUD and the Trustee, (2) FHA approves a mortgage increase to cover such costs, (3) GNMA Securities are issued in the increased amount, and (4) Section 8 contract rents are increased proportionately, all pursuant to the applicable HUD regulations.

Section 10.02 Execution

The Trustee (with the prior written approval of HUD) is authorized to join with the Financing Agency in the execution of any amendment or supplemental indenture for the purposes described in Section 10.01. However, the Trustee shall not be obligated to enter into any such amendment or supplemental indenture which adversely affects its rights, duties or immunities under this Indenture.

Section 10.03 Additional Security

Any amendment or supplemental indenture under this Article not requiring the approval of any Holders shall provide such additional proportionate security in the form of GNMA Securities and debt service reserve requirements as may be necessary to prevent any dimunition of the security of any Holders.

Section 10.04 Refinancing

No amendments or supplemental indentures are authorized to refinance any outstanding Obligations.

Section 10.05 Discretion of Trustee

In every case provided for in this Article (other than a supplemental indenture approved by the Holders of sixty-five per centum in aggregate principal amount of the Obligations pursuant to Section 10.06) the Trustee shall be entitled to exercise its unrestricted discretion in determining whether or not any proposed amendment or supplemental indenture is necessary or desirable, upon consideration of the needs of the Financing Agency and the respective rights and interests of the Holders of the Obligations. The Trustee shall be under no responsibility or liability to the Financing Agency or to any Holder of any Obligation, or to anyone whatever, for any act or thing which it may do or decline to do in good faith, subject to the provisions of this Article.

Section 10.06 Amendment or Supplemental Indenture With Consent of Holders

With the prior written approval of HUD, the Holders of not less than sixty-five per centum in aggregate principal amount of the outstanding Obligations shall have the right to consent to and approve the execution of an amendment to the Indenture or supplemental indentures by the Financing Agency and the Trustee. Provided however, that nothing therein contained shall permit, or be construed as permitting (a) an extension of the maturity of any obligation issued hereunder, or (b) a reduction in the principal amount of any obligation or the rate of interest thereon, or (c) the creation of a lien upon or a pledge upon the Trust Estate ranking prior to or on a parity with the lien or pledge credited by this Indenture, or (d) a preference or priority of any Obligation over any other Obligation, or (e) a reduction in the aggregate principal amount of the Obligations.

Whenever the Financing Agency shall deliver to the Trustee such consent of the Holders of not less than sixty-five per centum in aggregate principal amount of the Obligations then outstanding, which instrument or instruments shall refer to the proposed amendment or supplemental indenture and shall specifically consent to and approve the execution thereof, and an instrument containing the prior written consent of HUD, the Trustee may execute the amendment or supplemental indenture without liability or responsibility to any Holder of any Obligation, whether or not such Holder shall have consented thereto.

No Holder shall have any right to object to the execution of any amendment or supplemental indenture under this Section, or to object to any of the terms and provisions of such amendment or supplemented indenture, or in any manner to question the propriety of the execution, or to enjoin or restrain the Trustee or the Financing Agency from executing the same or from taking any action pursuant to the provisions thereof.

Article XI—Miscellaneous

Section 11.01 Covenants Bind Seccessors and Assigns

All the covenants, stipulations, promises and agreements in this Indenture made for or on behalf of the Financing Agency and the Trustee, shall bind and inure to the benefit of their successors and assigns.

Section 11.02 Immunity of Officers

No recourse for the payment of any part of the principal of or interest on any Obligation or for the satisfaction of any liability founded upon or existing by reason of the issue, purchase or ownership of the Obligations or coupons shall be had against any officer, director, or trustee of the Financing Agency or the Trustee. All such liability is expressly released and waived as a condition of and as a part of the consideration for the execution of this Indenture and the issuance of the Obligations and coupons.

Section 11.03 No Benefits to Outside Parties

Nothing in this Indenture is intended to confer upon or to give to any person or corporation, other than the parties hereto and the Holders of the Obligations or coupons issued hereuned, any right, remedy or claim.

Section 11.04 Separability of Indenture Provisions

If any one or more of the provisions of this Indenture or the Obligations or coupons shall be held invalid, illegal or unenforceable, that finding shall not affect any other provisions of this Indenture. This Indenture shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 11.05 Execution of Indenture in Counterparts

This Indenture may be executed simultaneously in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 11.06 Table of Contents and Headings Not Controlling

The Table of Contents and the headings of the Articles and Sections are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Indenture.

Section 11.07 Annual Audit and Report

The Trustee shall submit an annual accounting to HUD and the Financing Agency of amounts held by the Trustee in the various funds and accounts comprising the Trust Estate.

Section 11.08 Controlling Provisions

In the event of any conflict between the provisions of this Indenture and the HUD and GNMA statutes, regulations, written administrative directives, and forms, such HUD and GNMA requirements shall be controlling.

Section 11.09 Maturity of Obligations

The Obligations shall be initially issued for a total term which equals (a) the term of the CLC's and (b) the term of the proposed PLC, both as specified in the GNMA Commitment Contract and Guaranty Agreements. Upon issuance of the PLC, such initial total term shall be adjusted as necessary to provide a total term corresponding to the period beginning on the date of issue of the Obligations and ending on the final maturity of the PLC.

Section 11.10 Limitations on Rights and Remedies

All of the rights, remedies and powers granted in this Indenture may be exercised only to the extent that the exercise thereof does not violate applicable provisions of State law. All provisions of this Indenture are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary in order that this Indenture will not be rendered invalid or unenforceable in whole or in part.

Exhibit A—Form of Obligation

No. ——— $———

———— (the Financing Agency), for value received, hereby promises to pay, solely from the Trust Estate held under the Trust Indenture, to the bearer or, if this Obligation be registered as to the principal, to the registered owner hereof, on the 1st day of ————, 19—, (or earlier as hereinafter referred to) upon the presentation and surrender hereof the principal sum of —— Thousand Dollars ($————) and to pay interest thereon from the date hereof at the rate of —— per centum (—%) per annum, payable ———— 1, 19—, and semiannually thereafter on ———— and ———— of each year upon the presentation and surrender of the coupons representing such interest as the same respectively become due. Both the principal of and the interest on this Obligation shall be payable in any coin or currency of the United States which, on the respective dates of payment thereof, is legal tender for the payment of debts due the United States. The principal of this Obligation and the interest hereon are payable as the same becomes due upon presentation and surrender at the principal corporate trust office of the Trustee.

This Obligation shall not be deemed to constitute a debt or obligation of the United States of America or any department or agency thereof, nor of the State [or Commonwealth] of———or of any of its municipalities or other political subdivisions nor are they liable for the payment of this Obligation or the interest hereon, but this Obligation shall be payable as to both principal and interest solely from said Trust Estate.

This Obligation is one of a duly authorized issue of Obligations of the Financing Agency in the aggregate principal amount of ———— Dollars ($————), dated as of ———, 19—, and designated as ———— [The Obligations) issued under and pursuant to the Trust Indenture between the Financing Agency and the Trustee, issued for the purpose of purchasing GNMA guaranteed, mortgage-backed securities (backed by an FHA insured mortgage loan) in order to assist in the financing of a housing project receiving subsidy under Section 8 of the United States Housing Act of 1937. Reference is made to the text of the Trust Indenture for the provisions, among others, pertaining to the custody and application of the proceeds of the Obligations, a description of the Trust Estate, the terms and conditions of the Obligations and any additional Obligations equally and ratably secured by the Trust Indenture which may be issued.

The Indenture was made and entered into as of ————, 19— and duly executed and delivered by the Financing Agency pursuant to a duly adopted Resolution, to the aforesaid Trustee, to which Indenture, and all indentures supplemental thereto, reference is made for a description of the GNMA Securities pledged thereunder, the rights of the Holders of the Obligations, the rights, duties and immunities of the Trustee, and the rights and obligations of the Financing Agency. Reference is also made to the Loan Agreement betwen the issuer of the GNMA Securities and the Trustee under the Trust Indenture. Executed counterparts of the Indenture and the Loan Agreement are on file at the office of the Trustee, and an executed counterparts have been recorded at the office of the ————, of the County of ————, State of ————, as provided by law.

Obligations of this issue, of which this Obligation is one, are numbered consecutively from —— to ——, in the order of maturity. Under the circumstances prescribed in the Indenture, all Obligations of this issue are subject to redemption at the principal amount thereof plus accrued interest.

Obligations maturing ———— and thereafter, are subject to redemption, in whole or in part, at the option of the Financing Agency and with the prior written approval of HUD, on any interest payment date during the entire life of the Obligation issue, in inverse numerical order at the principal amount thereof plus accrued interest, and are entitled to priority of redemption over all other redeemable Obligations.

Notice of any such redemption shall be published in a financial journal in the City of New York at least once and not more than sixty days nor less than thirty days before the date fixed for such payment: provided, that said published notice of redemption need not be given in the event that all of the Obligations to be so redeemed are held by a single owner, and notice in writing by certified or registered mail is given to such owner not more than sixty days nor less than thirty days before the date for redemption. Upon the happening of the above conditions said Obligations thus called shall not bear interest after the call date and, except for the purpose of payment, shall no longer be protected by the lien of the Indenture. If any of the Obligations called for redemption are registered as to principal, notice shall be mailed to the registered owner of each such Obligation by certified or registered mail, addressed to the registered address, not earlier than sixty days nor later than thirty days prior to the date fixed for redemption. If no Obligation payable to bearer are to be redeemed, published notice of such redemption need not be given.

This Obligation is transferrable by delivery unless registered as to principal in the owner's name hereon and upon the books of the Financing Agency which shall be kept at the office of the Trustee. After such registration, no transfer of this Obligation shall be valid unless made on said books and and noted hereon at the request of the registered owner hereof, or his duly authorized agent; but this Obligation may be discharged from registration by being in like manner transferred to bearer, whereupon transferability by delivery shall be restored; and this Obligation may again from time to time be registered or made payable to bearer as before. Such registration, however, shall not affect the negotiability of the annexed coupons, which shall always be transferable by delivery and be payable to bearer, and payment to the bearer thereof shall fully discharge the Financing Agency and the Trustee in respect of the interest therein mentioned, whether or not this Obligation is registered as to principal and whether or not any such coupons are overdue.

It is hereby declared and represented in issuing this Obligation and the issue of which it is a part, that the Financing Agency has covenanted and agreed to pay the principal of and interest on the Obligations and to establish and maintain the funds necessary therefor as more fully provided in the Indenture.

If an event of default occurs as defined in the Indenture the principal of this Obligation, and all other Obligations issued under the Indenture and outstanding, may be declared or may become due and payable prior to the stated maturities thereof, together with the interest accrued thereon, in the manner and with the effect and subject to the conditions provided in the Indenture.

The Indenture may be modified or amended in certain instances as set forth in the Indenture; Provided, However, that there shall be no modification or amendment which will permit (a) an extension of the maturity of any Obligation issued hereunder, or (b) a reduction in the principal amount of any Obligation or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of the Trust Estate ranking prior to or on a parity with the lien or pledge created by the Indenture, or (d) a preference or priority of any Obligation over any other Obligation, or (e) a reduction in the aggregate principal amount of the Obligations required to consent to any supplemental Indenture.

No recourse shall be had for the payment of the principal of or redemption price, of the interest on this Obligation or for any claim based hereon or on the Indenture, against the Trustee, or the Financing Agency or any predecessor or successor. As a material part of the consideration for the issue hereof, every bearer and registered Holder expressly waives and releases the Trustee and the Financing Agency from liability on this Obligation and agrees to that there shall be no recourse except against the Trust Estate.

It is hereby certified that all acts, conditions, and things required to be done precedent to and in the issuance of this Obligation and the issue of which it is a part, have been properly performed as required by law, and that provision has been made for the payment of principal of and interest on this Obligation and the issue of which it is a part as provided in the Indenture.

This Obligation and the coupons shall not be valid nor become obligatory for any purpose until this Obligation shall have been authenticated by the execution of the certificate hereon endorsed by the Trustee under the Indenture.

IN WITNESS WHEREOF ———— has caused this Obligation to be signed in its corporate name by its ————, its corporate seal to be hereunto affixed and attested by its ————, and the attached interest coupons to be executed by placing thereon the facsimile signature of the ———— of said Financing Agency, all as of the 1st day of ————, 19—.

(Seal) By: ————

Attest: ————

Schedule and Maturity Table of Obligations

Form of Trustee's Certificate

Certificate of Trustee

This is one of the Obligations designated in and issued under the provisions of the referenced Trust Indenture.

Trustee
By: ———

Form of Revenue Stamp Certificate

Revenue Stamp Certificate

The Indenture securing this Obligation has attached thereto, duly cancelled, the full amount of United States Internal Revenue stamps required by law.

The principal security for the timely payment of principal and interest on this obligation is comprised of the mortgage-backed securities guaranteed by the Government National Mortgage Association and held by the Trustee pursuant to the terms of the Trust Indenture. The full faith and credit of the United States of America is pledged for the timely payment of principal and interest on the securities pursuant to Section 306(g) of the National Housing Act, 12 U.S.C. 1721(g).

Certificate of Registration

It is hereby certified that, at the request of the Holder of the within Obligation, the undersigned as Trustee has this day registered it as to principal in the name of such Holder, as indicated in the registration blank below and on the books kept for such purpose. The principal of this Obligation shall be payable only to the registered Holder hereof named in the registration blank below, or his legal representative, and this Obligation shall be transferable only on the books of the Financing Agency kept in the office of the undersigned, and by an appropriate notation in the registration blank. If the last transfer recorded on the books of the undersigned, and in the registration blank below, shall be to bearer, the principal of this Obligation shall be payable to bearer and it shall be negotiable in all respects. In no case shall negotiability of the coupons attached hereto be affected by any registration as to principal.

Date of registration	Name of registered owner	Manner of registration	Registrar

Form of Coupon

No.——— $———

On the first day of ———, 19—, upon surrender of this coupon, unless the Obligation hereinafter mentioned shall have been previously called for redemption and payment thereof made or duly provided for, ——— will pay to bearer at the principal corporate trust office of ——— Dollars ($———), payable in any coin or currency which, on such date, is legal tender for the payment of debts due the United States of America, being six months' interest then due on its ——— Obligation No. ——, dated ——— 1, 19—.

By: ———

Alternative—Article IV

Establishment and Application of Funds, Escrow and Accounts

Section 4.01 Trust Estate

(a) The Financing Agency shall deposit or cause to be deposited the proceeds from the Obligations and any and all other monies received pursuant to the Indenture which jointly comprise the Trust Estate and shall be placed in the escrow and funds established under this Article. The Trust Estate in its entirety is pledged for the benefit of the Holders and a lien on the Trust Estate is created by this Indenture in favor of the Holders.

(b) Amounts withdrawn and paid out in the Trust Estate according to the provisions of this Article shall no longer be subject to the pledge and lien created by this Indenture.

Section 4.02 Obligation Proceeds Fund

(a) The Trustee shall establish an Obligation Proceeds Fund into which there shall be deposited all of the proceeds from the sale of the Obligations, including accrued interest earned thereon. The monies in the Obligation Proceeds Fund shall be applied by the Trustee for the following purposes and in the following priority.

(i) To transfer to the Principal and Interest Sinking Fund Account a one-month debt service reserve equal to one month's debt service on the Obligations;

(ii) To transfer to the Principal and Interest Sinking Fund Account such sums which, together with any monies deposited into said Account plus any accrued interest in the Account, are necessary to pay interest on the Obligations;

(iii) To purchase, upon receipt of evidence satisfactory to the Trustee under the Agreement, in the name of the Financing Authority as registered owner, GNMA Mortgage-Backed Securities (CLCs and PLC) on such dates and at such prices, plus accrued interest thereon, as shall from time to time be required in connection with the issuance of such CLCs and PLC by the GNMA Issuer; and

(iv) To transfer all monies to the Principal and Interest Sinking Fund Account in the event a PLC cannot be issued within the maturity period of the CLCs.

(c) After issuance of the PLC, any remaining monies in the Obligation Proceeds Fund shall be transferred to the Principal and Interest Sinking Fund Account to be applied by the Trustee in accordance with instructions received from HUD.

Section 4.03 Custodial Escrow

(a) The Trustee shall establish a Custodial Escrow as a non-monetary escrow. All CLCs and the PLC shall be placed in the Custodial Escrow upon purchase.

(b) No CLC or PLC shall be sold, transferred or otherwise disposed of except in accordance with the Indenture, the Agreement and the GNMA Guaranty Agreements.

(c) All debt service payments on the mortgage loan received and passed-through by the mortgagee to the Trustee as custodian for the GNMA mortgage-backed securities shall be deposited immediately in the Principal and Interest Sinking Fund Account, as prescribed in Section 4.04

Section 4.04 Principal and Interest Sinking Fund Account

(a) Immediately following issuance of the Obligations, the Trustee shall establish a Principal and Interest Sinking Fund Account, which shall be maintained as a trust account for the benefit of the holders of the Obligations so long as any portion of the Obligation is outstanding. The Trustee shall deposit monies into the Account and withdraw monies from the Account in accordance with the provisions set forth in this Section and in Section 4.05. The monies in the Principal and Interest Sinking Fund Account shall be invested by the Trustee in Permitted Investments.

(b) The Trustee shall deposit into the Principal and Interest Sinking Fund Account the following:

(i) A transfer from the Obligation Proceeds Fund of a one-month debt service reserve equal to one month's debt service on the Obligations;

(ii) Regular monthly installments of interest on the CLCs and of the principal and interest on the PLC received by the Trustee under the Agreement with the GNMA Issuer (or from GNMA, in the event of a default by the GNMA Issuer); and

(iii) Prepayment in whole or in part of the CLC's or PLC.

(c) Monies in the Principal and Interest Sinking Fund Account, including any interest earned thereon, shall be applied by the Trustee for the following purposes:

(i) To pay interest on the Obligations as it becomes due;

(ii) To pay the principal of the Obligations as it becomes due;

(iii) To add to the debt service reserve until it is equal to two months of debt service; and

(iv) To dispose of the residual monies in the Account in the manner prescribed in Section 4.05.

Section 4.05 Disposition of Residual Monies

(a) Not later than 15 days after the end of the fiscal year, the Trustee shall submit to HUD the following information on the condition of the Principal and Interest Sinking Fund Account for the fiscal year just ended:

(i) Balance in the Account at the beginning of the fiscal year;

(ii) The amount of principal and interest on the CLCs and the PLC received each month under the Agreement with the GNMA Issuer;

(iii) All interest earned druing the fiscal year from investment of monies received and held in the Account;

(iv) Any other monies received by the Trustee for deposit into the Account;

(v) All disbursements made from the Account for payment of principal and interest on the Obligations;

(vi) Any other disbursements made from the Account;

(vii) The amount, if any, added to the debt service reserve so that it can meet its prescribed maximum;

(viii) Balance in the Account at the end of the fiscal year; and

(ix) The amount of the debt service reserve at the end of the fiscal year.

(b) In accordance with a written instruction from HUD, the Trustee shall dispose of the residual monies in the Principal and Interest Sinking Fund Account, representing the difference between the sums reported for items (a)(viii) and (a)(ix), for one or more of the following purposes;

(i) To redeem Obligations prior to their maturity in accordance with the schedule set forth in Section 3.01;

(ii) To make payments to HUD as a means of reducing the HUD subsidy for the housing project financed by the Obligations; or

(iii) To make any other payments or transfers of monies as directed by HUD.

Instructions for Completion of Loan Agreement

1. *General*

The Loan Agreement is to be used in all combination financing transactions under 24 CFR Part 811, Subpart B, regardless of whether the transaction involves the issuance of tax-exempt bonds, notes or pass-through obligations.

The Loan Agreement is the primary responsibility of the HUD Field Counsel. However, the appropriate administrative offices must approve all of the fees, charges, interest rates and cost of issuance prior to review by Field Counsel. Field Counsel shall determine that the Loan Agreement has been completed, administratively approved and executed in accordance with the directives set forth below. Field Counsel are authorized to approve nonsubstantive changes and changes which are required by local law if such changes do not conflict with any statutory or regulatory requirements of HUD. All other changes shall be referred in writing to the General Counsel.

2. *Introductory Paragraph*

(a) Parties (Page 1): The Financing Agency, the Trustee, the Mortgagee and the Mortgagor are the only acceptable parties to the Loan Agreement. Appropriate titles and descriptions of the entities shall be inserted in the introductory paragraph.

(b) Effective Date and Execution (Page 1): The effective date of the Loan Agreement, indicated in the introductory sentence, shall be the date of the issuance of the tax-exempt obligations which may preceded, but not be subsequent to, the date of initial endorsement. The Loan Agreement must be executed prior to initial endorsement and local law or custom with respect to execution (witnesses, acknowledgement, seals, etc.) shall be followed.

3. *Recitals*

There are two places in the recitals where more detailed information has to be inserted:

(a) First recital: Description of Trust Indenture.

(b) Ninth recital: Location and general physical description of the housing project.

4. *Main Text*

(a) *Covenants of the Mortgagee* (Section 4, Page 6):

Interest rate of the insured mortgage.

(b) *Fees* (Section 6, Page 9):

The appropriate HUD field office administrative personnel must make a written determination that the fees and charges set forth in the following subsection are "necessary and reasonable" pursuant to the "Part 811 B" regulations and handbook directions:

(Section 6(a)(1), Page 9): Initial Service Charge by Mortgagee not to exceed 2 percent of the 3½ percent included in the mortgage.

(Section 6(a)(4), Page 10): Additional Charges by Mortgagee within the 3½ percent included in the mortgage and owed to the Trustee to cover cost in issuance.

(Section 6(a)(5), Page 10): "Negative arbitrage" charges by Mortgagee within the 3½ percent included in the mortgage.

(Section 6(b)(3), Page 11): Out-of-pocket expenses paid by the Mortgagor directly to the Trustee to cover costs of issuance over and above those covered by (a)(4).

(Section 6(b)(4), Page 11): Itemized listing of all cost of issuance.

(c) *Additional Insurance Requirements* (Section 8, Page 13): The amount of and a more complete description of the general liability insurance may be inserted in subsection (a). In the event there are other types of insurance required over and beyond the HUD/FHA requirements, such as boiler explosion insurance, builder's risk insurance, workmen's compensation insurance, use and occupancy/business interruption insurance or flood insurance, additional subsections should be inserted detailing the nature and amounts of such insurance. Such additional insurance must be approved in writing by the appropriate administrative personnel.

Loan Agreement

This Loan Agreement dated as of ——— is between the following parties:

A. The Financing Agency,

B. The Trustee,

C. The Mortgagee,

D. The Mortgagor,

Whereas, the Financing Agency is authorized by law and deems it necessary to borrow money for the purpose of aiding and assisting in the making of a loan for the financing and development of a low-income housing project located in

(the Project) pursuant to the terms of a certain Trust Indenture, and to that end has duly authorized the issuance of its Obligations and the execution and delivery of the Trust Indenture; and

Whereas, pursuant to the terms of the Trust Indenture, the Trustee has accepted certain trusts, undertaken certain duties and assumed responsibilities for an on behalf of the Financing Agency and the Holders of the Obligations in connection with the issuance of the Obligations; and

Whereas, the Mortgagee holds a firm commitment issued by the Federal Housing Administration (FHA) for the issuance of construction advances made by the Mortgagee to finance the construction and for the permanent financing of the Project pursuant to the provisions of Section 221 of the National Housing Act of 1934, as amended; and

Whereas, the funds for the financing of the Project will be provided by the Mortgagee pursuant to the terms of the FHA firm commitment, the FHA-insured mortgage and the Contract of Mortgage Insurance (24 CFR Part 221, Subpart D); and

Whereas, the Mortgagee is an eligible Government National Mortgage Association (GNMA) issuer of GNMA guaranteed Mortgage-Backed Securities under Section 306(g) and related provisions of the National Housing Act of 1934, as amended; and

Whereas, GNMA Securities issued by the Mortgagee pursuant to certain GNMA Guaranty Agreements are backed by the full faith and credit of the United States; and

Whereas, pursuant to the terms of the CLC Guaranty Agreement, the Mortgagee will issue Construction Loan Certificates (CLC's) in connection with construction advances for the Project made pursuant to the FHA Building Loan Agreement between the Mortgagor and the Mortgagee; and

Whereas, upon completion of the project and final endorsement of the mortgage loan and, pursuant to the terms of the PLC Guaranty Agreement, the Mortgagee will issue a Permanent Loan Certificate (PLC) which will be used to retire all outstanding CLC's; and

Whereas, the Mortgagor has executed an Agreement to Enter into a Housing Assistance Payments Contract with HUD for the assistance of certain eligible tenants in the Project pursuant to Section 8 of the United States Housing Act of 1937, as amended, under the terms a Housing Assistance Payments Contract which will be executed by the Mortgagor and HUD when the Project is accepted for occupancy under the appropriate HUD regulations; and

Whereas, use of the proceeds from the sale of the Obligations by the Financing Agency to purchase GNMA Securities is essential in order to enable the Mortgagee to make the FHA-insured loan to the Mortgagor at an interest rate which is lower than would be obtainable by the Mortgagor in the conventional mortgage market; and

Whereas, such lower interest rate on the FHA-insured mortgage will result in lower monthly payments to interest and a lower total mortgage obligation which will enable the Mortgagor to provide low income housing for lower costs and will reduce the Section 8 subsidy payments;

Now therefore, the Financing Agency, the Trustee, the Mortgagee and the Mortgagor do hereby mutually convenant and agree as follows:

Section 1. *Definitions.*

All of the terms used herein shall have the same meanings as set forth in the Recitals above, and as the same or similar terms used in the Trust Indenture described above.

Section 2. *Covenants of the Financing Agency.*

(a) The Financing Agency covenants to do all things within its power in order to comply with, and to enable or direct the Trustee to comply with, all requirements and covenants set forth in the Resolution and the Trust

Indenture, including, but not limited to, the timely payment of principal and interest on the Obligations, and taking any required actions to protect the interests of the Holders of the Obligations.

(b) The Financing Agency covenants to comply with all those conditions and requirements imposed upon it by the HUD regulations.

(c) The Financing Agency reserves the right to inspect the Project and any party's documents and books related to this transaction, and to require such financial reports and audits from any other party to the transaction as may be required or permitted under the HUD regulations.

(d) The Financing Agency covenants to monitor the operation and maintenance of the Project by the Mortgagor, and the servicing of the mortgage by the Mortgagee, and to take such corrective action as it, in its discretion, determines necessary.

Section 3. *Covenants of the Trustee.*

(a) The Trustee shall act in a fiduciary capacity to the Financing Agency and the Holders of the Obligations as prescribed in the Trust Indenture.

(b) The Trustee covenants to purchase all the CLC's and the PLC at a purchase price of par plus accrued interest whether issued by the Mortgagee pursuant to the Guaranty Agreements or issued by GNMA or a successor mortgagee in the event the Mortgagee does not issue the CLC's and the PLC.

(c) The Trustee covenants that it has collected directly from the Mortgagor such out-of-pocket expenses as the Mortgagor is obligated to pay hereunder for cost of issuance and has applied or will apply such monies to the appropriate funds and accounts under the Trust Indenture.

Section 4. *Covenants of the Mortgagee.*

(a) In consideration of the agreement of the Trustee, on behalf of the Financing Agency, to purchase those CLC's and the PLC issued by the Mortgagee in connection with the Project, the Mortgagee hearby covenants to make a mortgage loan to the Mortgagor which will be insured by HUD under Section 221 of the National Housing Act of 1934, as amended and will be at an interest rate of ——— percent. The Mortgagee agrees to make construction advances pursuant to the Building Loan Agreement (FHA Form No. 2441) and to issue CLC's in connection with such construction advances pursuant to the CLC Guaranty Agreement between the Mortgagee and GNMA. Upon completion of construction, the Mortgagee agrees to make the loan for the permanent financing and to issue a PLC pursuant to the PLC Guaranty Agreement.

(b) As mortgagee-of-record under the Contract of Mortgagee Insurance with HUD, the Mortgagee agrees to service the mortgage and perform all those duties required of it under the Contract of Mortgage Insurance and the FHA standard from mortgage documents.

(c) The Mortgagee covenants that it will fully comply with all terms and conditions of the Guaranty Agreements with GNMA and all of the GNMA standard form documents executed in connection with the GNMA Securities transactions. This includes delivering the requisite HUD mortgage insurance documents to the GNMA custodian referred to the Guaranty Agreements.

(d) The Mortgagee covenants not to do or perform any act which would in any way impair its rights under either the Contract of Mortgage Insurance or the GNMA Guaranty Agreements.

(e) The Mortgage agrees to act as pledgee under the Section 8 HAP pledge agreement (the Pledge) executed by the Mortgagor and incorporated herein by reference. The Mortgagee shall have no obligations under the Pledge except, first, to apply the Section 8 Housing Assistance Payments under the terms of the mortgage and, second, to remit the Obligation Servicing Fee to the Trustee, as if such monies were received from the Mortgagor and, third, to remit any excess to the Mortgagor. The Mortgagee shall not have any duties or responsibilities as pledgee with respect to the HAP Contract, the accuracy of the HAP payment or any other matter outside the express provisions of the Pledge.

(f) Nothing contained in this Loan Agreement shall conflict with or shall be construed so as alter or diminish the obligations or duties of the Mortgagee to GNMA or to the Trustee as purchaser of the GNMA Securities under the GNMA Guaranty Agreements, the GNMA regulations, the GNMA Mortgage-Backed Securities Guide (GNMA 5500.1, a HUD Handbook) or other GNMA forms; or FHA or the Mortgagor under the Contract of Mortgage Insurance or the FHA form documents and FHA regulations.

(g) The Mortgagee covenants to collect from the Mortgagor and to pay to the Trustee those fees includable in the 3½ per cent permissible in the insured mortgage loan which are necessary to pay the cost of issuance fees which the Mortgage is obligated to pay to the Trustee under Section 7.

Section 5. *Covenants of the Mortgagor.*

(a) The Mortgagor covenants to make timely payment on and to comply with the terms of the Project mortgage, the Housing Assistance Payments Contract and the Regulatory Agreement with HUD.

(b) The Mortgagor covenants to pay out-of-pocket expenditures, if any, which have been approved by FHA and which are set forth in Section 6.

(c) The Mortgagor covenants to construct the Project or cause the Project to be constructed pursuant to the terms of the Building Loan Agreement.

(d) The Mortgagor has entered into an Agreement to Enter into a Housing Assistance Payments Contract with HUD and will execute the Housing Assistance Payments Contract upon substantial completion and inspection of the Project by HUD pursuant to the applicable Section 8 requirements.

(e) The Mortgagor agrees to pledge to the Mortgagee at final endorsement the right to receipt of payments under the Housing Assistance Payments Contract pursuant to the requirements Section 4(e).

Section 6. *Fees*

(a) *The Mortgagee*

(1) The Mortgagee shall collect an initial service charge of $———, which does not exceed 2 per cent of the original principal amount of the mortgage and is payable by the Mortgagor out of the 3½ per cent included in the FHA-insured mortgage.

(2) The Mortgagee shall collect a servicing fee as set forth in Section 104 of the CLC and PLC Guaranty Agreements. Such servicing fee shall be payable from the 25 basis points differential between the interest rates on the GNMA Securities and the mortgage.

(3) The Mortgagee shall collect from the Mortgagor $——— hereunder, which amount does not exceed the remainder of the 3½ percent included in the mortgage, in order to cover the obligations of the Mortgagee to the Trustee and Financing Agency in connection with the cost of issuance.

(4) The Mortgagee shall collect $——— which are those charges reasonable and necessary to cover the Mortgagee's actual costs in connection with negative arbitrage or "negative carry" during the construction period. Such charges will be payable by the Mortgagor out of the 3½ percent included in the mortgage.

(5) The Mortgagee shall not be entitled to any other fees and charges in connection with this transaction and agrees to certify to the aforesaid fees and charges in the Mortgagee's Certificate (FHA Form 2434).

(b) *The Trustee*

(1) The Trustee convenants and agrees, on behalf of the Financing Agency, to charge and collect from the Mortgagor and the Mortgagee the cost of issuance and fees which are necessary and reasonable and are approved by HUD.

(2) The Trustee shall collect from the Mortgagee $———, which amount represents a portion of the 3½ percent included in the mortgage and collected by the Mortgagee.

(3) In addition to those fees in (2), the Trustee has collected $——— from the Mortgagor which amount the Mortgagor has paid out-of-pocket either in cash or through a letter of credit which is held by the Trustee outside the mortgage transaction. It is understood and agreed by all parties hereto that such out-of-pocket expenditures by the Mortgagor are not includable in the mortgage and are not cost certifiable.

(4) The Trustee shall collect an Obligation Servicing Fee from the Mortgaor on a monthly basis in an amount of $

(5) The aforementioned total fees and charges by the Trustee, on behalf of the Financing Agency, of $ are to be used to pay the following items of cost of issuance which have been determined by HUD to be reasonable and necessary.

Bond Counsel Fees $ ———
Other Attorney's Fees ———
Financing Agency Fees ———
Financial Advisor/Consultant Fees ———
Printing Costs ———
Trustee's Fees ———
Underwriter's Discount ———
Underwriter's Fees ———
Other Fees and Expenses ———

The Trustee and the Financing Agency certify by execution hereof that these items represent all charges and fees comprising the cost of issuance in connection with the transaction and that neither party has charged or collected or will charge or collect any additional fees or charges. ———

(c) *The Mortgagor*

The Mortgagor agrees to pay the aforementioned fees and charges to the

Mortgagee and to the Trustee, acting on behalf the Financing Agency. The Mortgagor certifies that it has paid all of the aforementioned fees and charges prior to initial endorsement as required by FHA mortgage insurance procedures and has not incurred or paid any additional expenses in connection with this transaction with the exception of the Obligation Servicing Fee which the Mortgagor is obligated to pay from project income on a monthly basis after all mortgage payments have been made.

Section 7. *Hazard Insurance and Condemnation Occurrences.*

In the event of a hazard insurance payout or the receipt of a condemnation award by the Mortgagee, the Mortgagee hereby agrees that it shall, pursuant to the discretion vested in it under the FHA form mortgage instrument, consult with the Mortgagor and HUD and make a determination, within 30 days, whether to apply such monies to repair, restoration or rebuilding or to apply any such monies to prepayment under the mortgage note. In the event the Mortgagee applies any such hazard insurance or condemnation receipts to prepayment under the mortgage note, such amount shall be passed on to the Trustee as holder of the GNMA Securities Certificates pursuant to the appropriate Guaranty Agreement. The Trustee would, in turn, be required under terms of the Trust Indenture to redeem a proportionate amount of the tax-exempt Obligations. The Mortgagor and Mortgagee agree to exercise sound business discretion and judgment in making such determinations and to follow all HUD requirements.

Section 8. *Additional Insurance Requirements.*

(a) The Mortgagor agrees to maintain general public liability insurance in an amount of $.

(b) The Mortgage shall be responsible for paying the liability insurance, and shall collect adequate monies for payment from the Mortgagor and shall keep the insurance in full force and effect in the event the Mortgagor fails to do so. Any insurance escrows maintained by the Mortgagee under this Section shall be held pursuant to the terms of the Contract of Mortgagee Insurance.

Section 9. *Prepayment*

(a) Pursuant to 24 CFR 221.524(d), the mortgagor has agreed in the mortgage note not to voluntarily repay the mortgage obligation; however, in the event of involuntary prepayment as a result of a hazard or condemnation occurrence or for any other reason, the parties agree that GNMA Securities shall be redeemed in the manner set forth in the applicable Guaranty Agreement and the Trustee shall redeem a proportionate amount of Obligations.

(b) In the event the Trustee is given express written permission by HUD to redeem any Obligations, the parties agree that monies available for such redemption shall first be used to prepay the mortgage and the GNMA Securities.

Section 10. *Purchase of Additional GNMA Securities.*

(a) Additional Obligations may be issued by the Financing Authority provided the following conditions are met;

(i) HUD approves an increase in the mortgage amount and GNMA Securities are issued in the increased amount.

(ii) The contract rents are increased to the extent required to pay debt service on the additional obligations.

(iii) All other applicable provisions of 24 CFR, Part 811, Subpart B have been met.

(b) The parties hereto agree that the Mortgagee will issue additional GNMA Securities in an equal amount to any such additional Obligations (less any additional capitalized debt service reserve) and the Trustee shall purchase such GNMA Securities pursuant to the terms and conditions of the Trust Indenture and this Loan Agreement and any amended or additional Guaranty Agreements.

Section 11. *Default and Remedies*

Failure of any of the parties to comply with any of the provisions hereof or any of the provisions or requirements in the documents pertaining to the GNMA Securities transaction, the Section 8 transaction, the FHA mortgage insurance transaction or the issuance of the Obligations, shall be an event of default hereunder. All of the documents and requirements pertaining to those transactions are incorporated herein by reference. In the event of such default, any party hereto or any of the Holders, or HUD shall have the power to apply to any court of competent jurisdiction (a) for specific performance of the obligations and agreements under this Loan Agreement, (b) for an injunction against any violations of any of the covenants, obligations or agreements hereunder, or (c) for such other relief as may be appropriate.

Section 12. *Third Party Beneficiaries*

Inasmuch as the purpose of this Loan Agreement is to provide for the use of the proceeds from the sale of Obligations and to provide security for the Holders, all covenants, agreements and representations on the part of the Financing Agency, the Trustee, the Mortgagee and the Mortgagor shall inure to the benefit of and shall be enforceable by the Holders of the Obligations.

Section 13. *Controlling Provisions*

In the event of any conflict between the provisions of this Indenture and the HUD and GNMA statutes, regulations, written administrative directives, and forms, such HUD and GNMA requirements shall be controlling.

Section 14. *Amendment*

This Loan Agreement may be amended by the parties hereto, provided that any amendment must be in conformity with the Resolution, Trust Indenture and all HUD requirements and must be approved in writing by HUD.

Section 15. *Breach of Certifications or Covenants.*

(a) A breach of any of the certifications and convenants of this Loan Agreement may constitute a violation which could subject the party responsible for such breach to criminal prosecution under the following criminal statutes, among others:

(i) 12 U.S.C. 1715z-4(b), provides in part: "Whoever, as an owner of a property which is security for a mortgage * * * or as a stockholder * * * beneficial owner * * * or as an officer, director, or agent of any such owner, (1) willfully uses or authorizes the use of any part of the rents or other funds derived from the property covered by such mortgage in violation of a regulation * * *, or (2) * * * willfully and knowingly uses or authorizes the use, while such mortgage is in default, of any part of the rents or other funds * * *, shall be fined not more than $5,000 or imprisoned not more than three years, or both."

(ii) 18 U.S.C. 1001 provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

(iii) 18 U.S.C. 1010 provides in part: "Whoever for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, not more than $5,000 or imprisoned not more than two years, or both."

(iv) 18 U.S.C. 1012 provides in part: "Whoever, with intent to defraud, makes any false entry in any book of the Department of Housing and Urban Development or makes any false report or statement to or for such Department;

Whoever receives any compensation * * * with intent to defraud such Department or with intent unlawfully to defeat its purposes * * * Shall be fined not more than $1,000 or imprisoned not more than one year, or both".

(b) A breach of this Loan Agreement may also be a basis for a denial of participation in the programs of the Department of Housing and Urban Development.

Section 16. *Term*

This Loan Agreement shall remain in effect as long as there are any outstanding Obligations.

[FR Doc. 80-20698 Filed 7-10-80; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SAC 050595]

Notice of Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

June 30, 1980.

The Department of Agriculture, Forest Service, filed application Serial No. SAC 050595 on May 31, 1955, for a withdrawal in relation to the following described lands:

Tahoe National Forest; Mount Diablo Meridian

Oregon Creek Campground

T. 18 N., R. 8 E.,

Sec. 28, SW¼SW¼SE¼NE¼, W½NE¼SE¼, E½NW¼SE¼, and N½N½NW¼SE¼SE¼.

Ramshorn Campground

T. 19 N., R. 9 E.,
Sec. 1, N½SE¼.

Serpentine—Goodyears Bar Admin Site

T. 19 N., R. 10 E.,
Sec. 8, N½NW¼.

Sugar Pine Station

T. 15 N., R. 11 E.,
Sec. 20, S½SE¼.

South Yuba No. 1–Keleher Picnic Site

T. 17 N., R. 11 E.,
Sec. 6, SE¼SE¼SW¼ and S½SE¼.

South Yuba No. 3—Golden Quartz Picnic Site

T. 17 N., R. 11 E.,
Sec. 9, Lot 2 (in E½NW¼).

Middle Waters Campground

T. 19 N., R. 11 E.,
Sec. 12, S½NE¼SE¼ and NE¼SE¼SE¼.

Union Flat Campground

T. 20 N., R. 11 E.,
Sec. 28, SE¼SW¼;
Sec. 33, N½NE¼NW¼.

Shady Haven—New York Ravine Day Use Site

T. 20 N., R. 11 E.,
Sec. 31, SE¼N½ Lot 8, Lot 11, SW¼NW¼SE¼, and NE¼SW¼SE¼.

Fuller Lake Campground

T. 17 N., R. 12 E.,
Sec. 8, SE¼SW¼ and SW¼SE¼.

Rucker Lake Organization Camp

T. 17 N., R. 12 E.,
Sec. 8, N½NE¼, SW¼NE¼, and NE¼NW¼.

Yuba River—Indian Springs Campground

T. 17 N., R. 12 E.,
Sec. 24, N½N½.

Lindsay Creek Organization Camp

T. 18 N., R. 12 E.,
Sec. 20, S½S½N½ and N½N½S½.

Jackson Creek Campground

T. 18 N., R. 12 E.,
Sec. 2, Lots 3 and 4 and S½NW¼.

Grouse Ridge Campground

T. 18 N., R. 12 E.,
Sec. 34, W½NE¼.

Weaver Lake Campground

T. 19 N., R. 12 E.,
Sec. 32, SW¼ (less NE¼NE¼SW¼) and SW¼SW¼SE¼.

Salmon Creek Campground

T. 20 N., R. 12 E.,
Sec. 3, W½SE¼.

Packer Lake Picnic Site—Resort

T. 20 N., R. 12 E.,
Sec. 5, S½N½SW¼ and S½SW¼;
Sec. 8, N½N½NW¼.

Lower Sardine Campground—Resort

T. 20 N., R. 12 E.,
Sec. 10, NW¼.

Wild Plum Campground

T. 20 N., R. 12 E.,
Sec. 26, S½SW¼;
Sec. 27, S½SE¼ (less Lot 77).

Snag Lake Campground

T. 21 N., R. 12 E.,
Sec. 21, SE¼NE¼ and NE¼SE¼;
Sec. 22, SW¼NW¼ and NW¼SW¼.

Upper Salmon Lake Resort

T. 21 N., R. 12 E.,
Sec. 29, W½E½NE¼, W½NE¼, and E½E½NW¼.

Big Tree Grove and Picnic Site

T. 14 N., R. 13 E.,
Sec. 18, Lots 5, 6, and 8, and SE¼SW¼;
Sec. 19, Lot 1 and NE¼NW¼.

Sterling Lake Campground—Organization Camp

T. 17 N., R. 13 E.,
Sec. 10, Lot 1, NE¼NE¼, and E½SE¼.

Woodchuck Campground—Organization Camp

T. 17 N., R. 13 E.,
Sec. 16, SE¼.

Hampshire Rocks Campground

T. 17 N., R. 13 E.,
Sec. 27, S½SE¼NE¼, SE¼SW¼NE¼, S½S½NW¼SW¼SW¼NE¼, SE¼NE¼SW¼SW¼NE¼, S½SW¼NE¼SW¼SW¼NE¼, and S½SW¼SW¼NE¼.

Big Bend Campground and Administrative Site

T. 17 N., R. 13 E.,
Sec. 28, S½NE¼ and N½SE¼.

Big Bend Home Tract

T. 17 N., R. 13 E.,
Sec. 28, SW¼.

Lincoln Creek Campground

T. 20 N., R. 13 E.,
Sec. 9, N½NW¼.

Yuba Pass Campground

T. 20 N., R. 13 E.,
Sec. 11, S½NW¼NW¼ and N½SW¼NW¼.

Sierra Campground

T. 21 N., R. 13 E.,
Sec. 31, SE¼SE¼SW¼ and S½SW¼SE¼.

Chapman Creek Campground

T. 21 N., R. 13 E.,
Sec. 32, S½NW¼SW¼, SW¼SW¼, and SW¼SE¼SW¼.

Talbot Campground

T. 15 N., R. 14 E.,
Sec. 2, Lots 15, 16, and 18.

Norden Organization Tract

T. 17 N., R. 14 E.,
Sec. 24, N½NW¼SE¼, SW¼SE¼NW¼SE¼, E½SE¼NW¼SE¼, SE¼NW¼SW¼SE¼, E½SW¼SW¼SE¼, E½SW¼SE¼, and E½SE¼.

Sugar Bowl—Winter Sports Site

T. 17 N., R. 15 E.,
Sec. 20, SE¼SE¼;
Sec. 28, N½.

Summit—Organization Tract

T. 17 N., R. 15 E.,
Sec. 20, NW¼NE¼.

Wm. Kent Picnic Site

T., 15 N., R. 16 E.,
Sec. 24, Tracts 37 and 38.

Deep Creek—Goose Meadow Campground

T. 16 N., R. 16 E.,
Sec. 4, E½ Lot 1, E½ Lot 2, and E½SW¼.

Silver Creek Campground

T. 16 N., R. 16 E.,
Sec. 21, W½E½.

Gravel Flat—Deer Park Picnic Site

T. 16 N., R. 16 E.,
Sec. 34, W½W½W½NW¼ and NW¼NW¼SW¼.

Truckee River—Granite Flat Campground

T. 17 N., R. 16 E.,
Sec. 21, W½SE¼.

The area described aggregates approximately 4,432 acres in Yuba, Placer, Nevada, and Sierra Counties, California.

The applicant desires the land for the establishment and protection of recreation sites within Tahoe National Forest.

A notice of the proposed withdrawal was published in the Federal Register on December 5, 1962, F.R. 62–11996, on pages 12004, 12005, and 12006.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing to the undersigned, Bureau of Land Management, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, on or before August 11, 1980. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before August 11, 1980.

The above described lands are temporarily segregated from the

operation of the United States mining laws (30 U.S.C., Ch. 2) to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to te undersigned.

Joan B. Russell,

Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc. 80-20659 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

[F-14903-C]

Alaska Native Claims Selection

This decision rejects a State selection application in part, and approves lands in the vicinity of Nenana for conveyance.

The State of Alaska filed general purposes selection application F-026794, as amended, on September 29, 1960, for lands in T. 2 S., R. 8 W., Fairbanks Meridian, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1976)). By decision of October 5, 1961, the State of Alaska was granted tentative approval for the E½ of T. 2 S., R. 8 W., Fairbanks Meridian. The above lands are near the Native village of Nenana.

Section 11 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610 (1976)) (ANCSA), withdrew the lands surrounding the village of Nenana for Native selection.

On December 11, 1974, Toghotthele Corporation, for the Native village of Nenana, filed selection application F-14903-C, as amended, under the provisions of Sec. 12 of ANCSA for the surface estate of certain lands in the vicinity of Nenana.

The village corporation selected lands which were withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b)).

Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by Sec. 11(a). Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The following described lands, which are State selected and were tentatively approved, have been properly selected under village selection application F-14903-C. Accordingly, the tentative approval of October 5, 1961, is rescinded in part and State selection application F-026794 is rejected as to the following described lands:

U.S. Survey No. 4442A, Alaska, situated at the mouth of Totchaket Slough about 7½ miles south of Minto, Alaska, that portion lying within what would be more particularly described as (protracted) Sec. 5, T. 2 S., R. 8 W., Fairbanks Meridian.
Containing 0.06 acre.
T. 2 S., R. 8 W., Fairbanks Meridian, Alaska (Surveyed). Those portions of Tract "A" more particularly described as (protracted):
Sec. 5, excluding U.S. Survey 4442A, U.S. Survey 4233B (Native allotment F-027070 Tract 2), U.S. Survey 4445A (Native allotment F-027119 Tract 3) and Totchacket Slough;
Secs. 6 and 7, all;
Sec. 8, excluding U.S. Survey 4453B, U.S. Survey 4445A (Native allotment F-027119 Tract 3), U.S. Survey 4233B (Native allotment F-027070 Tract 2), U.S. Survey 4467C (Native allotment F-034712 Parcel C), Native allotment F-18266 Parcel C and Totchacket Slough;
Sec. 16, excluding Totchacket Slough.
Containing approximately 2,781 acres.
Aggregating approximately 2,781 acres.

Further action on State selection application F-026794 as to those lands not rejected herein will be taken at a later date.

The total amount of lands which have been properly selected by the State, including any selection applications previously rejected to permit conveyances to Toghotthele Corporation is approximately 57,835 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

As to the lands described above, application F-14903-C, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the above described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 2,781 acres, is considered proper for acquisition by Toghotthele Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)).

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the Official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Toghotthele Corporation is entitled to conveyance of 138,240 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 58,849 acres. The remaining entitlement of approximately 79,391 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited when the surface estate is conveyed to Toghotthele Corporation, and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water body is considered to be navigable:

Totchaket Slough.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Farbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until August 11, 1980 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken the parties to be served with a copy of the notice of appeal are:

Toghotthele Corporation, Nenana Village Corporation, Box 322, Nenana, Alaska 99760.

Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Terry R. Hassett,

Acting Chief, Branch of Adjudication.

[FR Doc. 80-20746 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

Meeting of the Federal-State Coal Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public that there will be a meeting of the Federal-State Coal Advisory Board on August 12 and 13, 1980, in Denver, Colorado. Major purposes of the meeting are (1) to develop recommendations for the Secretary on preliminary regional coal production goals developed by the Department of Energy, (2) to review the activity planning process as it has taken place in certain Federal coal production regions, and (3) to recommend, if needed, changes in the activity planning process.

DATES: The advisory board will meet at 9:00 a.m. on August 12, 1980, and at 8:30 a.m. on August 13, 1980. Written comments on the items to be discussed at the advisory board meeting will be accepted at the meeting or by the Director, Bureau of Land Management, by August 7, 1980.

ADDRESSES: The advisory board meeting will be held at the Holiday Inn West, 14707 West Colfax, Golden, Colorado 80401, telephone (303) 279-7611. Written comments should be addressed to Director (160) Bureau of Land Management, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: H. Robert Moore, Assistant to the Director for Coal Management, Bureau of Land Management (160), 18th and C Streets, N.W., Washington, D.C. 20240, telephone (202) 343-4636.

SUPPLEMENTARY INFORMATION: The Federal-State Coal Advisory Board is chartered under the Federal Advisory Committee Act and is required to advise the Secretary of the Interior on certain aspects of the Federal coal management program. Specifically, the board is required to (1) consider and suggest policy for leasing targets, tract delineation, and site-specific analysis; (2) guide and review the tract ranking process; (3) provide advice on the sale scheduling process; (4) recommend adjustments, if needed, to the Department of Energy's (DOE's) regional coal production goals; and (5) serve as the forum for the Department/State consultation and cooperation for all leasing aspects of the Federal coal management program.

The board is comprised of the members of regional coal teams for the eight major Federal coal production regions. These teams are made up of the Governor or an alternate from each State within the region, the Bureau of Land Management (BLM) State Director from each State within the region, and a team vice-chairperson who is appointed by, and responsible to, the BLM Director. The eight Federal coal production regions are: (1) Green River-Hams Fork (Colorado and Wyoming); (2) Uinta-Southwestern Utah (Utah and Colorado); (3) Southern Appalachian (Alabama); (4) Powder River (Montana and Wyoming); (5) Fort Union (Montana and North Dakota); (6) Western Interior (Oklahoma); (7) San Juan River (New Mexico and Colorado); and (8) Denver-Raton Mesa (Colorado and New Mexico).

The advisory board, which is required to convene at least once each year, will meet on August 12 and 13, 1980, to develop recommendations for the Secretary on preliminary regional coal production goals developed by the Department of Energy, to review the coal activity planning process as it has taken place in certain Federal coal production regions, and to recommend, if needed, changes in the activity planning process. The agenda for the meeting is attached as Appendix A.

Background briefings on the production goal-leasing target process will be presented by DOE, Department of the Interior (DOI), and BLM personnel. Departmental and BLM personnel will also provide information on the activity planning process and the status of that process in each of the regions where activity planning is underway.

With the regional coal production goals now being developed by the DOE, both agencies will, for the first time, carry out the production goal-leasing target process set forth at 43 CFR 3420.3. The DOE is expected to provide its preliminary coal production goals to the DOI in mid-July 1980. Within 60 days of receipt of those preliminary goals, the DOI must submit its comments on the goals to the DOE. At the August meeting the board will be asked to develop recommendations for the Secretary of the Interior concerning the DOE preliminary regional production goals. The DOE will in turn issue, within 30 days of receipt of the DOI's comments, final regional production goals. Each regional coal team will use the final regional goals and the results of regional public hearings to develop recommendations for the Secretary of the Interior on the final regional leasing targets.

This meeting will also be an opportune time for the board to review the activity planning process. Specific areas that may be worthy of discussion

are: (1) Regional coal team guidance for tract delineation and site-specific analysis; (2) Methodology and documentation for tract ranking and tract selection; (3) Regional coal team participation in the EIS scoping meetings and other operational functions within the region; and (4) Recommendations for lease sale scheduling.

The public will have the opportunity to address the board during the afternoon session on August 12, 1980. In addition, written comments will be accepted by the Director of the BLM until the close of business, August 7, 1980, or at the advisory board meeting. All comments submitted will become part of the permanent record of the advisory board meeting.

The meeting will also serve as a forum for the official State government representatives to present their views on the implementation of the coal program and make any suggestions for improvement in the process or to identify any other areas of particular State concern.

Dated: July 3, 1980.

Ed Hastey,

Associate Director.

Agenda—Federal-State Coal Advisory Board Meeting, August 12 and 13, 1980

August 12, 1980

9:00 a.m.—Welcome and Opening Remarks—
- BLM Director
- Departmental Officials
- Governors

9:30 a.m.—Review of the Agenda and Purpose of the Meeting

9:45 a.m. Status Report on, and Discussion of, Coal Activity Planning—
- Summary of the Coal Activity Planning Process
- Regional Status Reports

10:15 a.m.—Break

10:30 a.m.—Activity Planning Discussion (continued)
- RCT Vice-Chairpersons
- State Government Representatives
- Ex Officio Agency Representatives

12:00 Noon—Lunch

1:00 p.m.—Briefing by DOE—
- Methodology for Production Goals
- Key Assumptions
- Preliminary Regional Production Goals
- Questions

2:00 p.m.—Briefing by DOI—
- Regional Leasing Target Process
- Anticipated Schedule
- Questions

3:00 p.m.—Break

3:15 p.m—Public Comment Period on Activity Planning, Production Goals, and Leasing Targets

5:00 p.m.—Adjourn

August 13, 1980

8:30 a.m.—Discussion of Goals and Targets

12:00 Noon—Lunch

1:30 p.m.—Deliberation and Formulation of Board Recommendations—
- Response to DOE on Production Goals Target-Setting Methodology

3:00 p.m.—Break

3:15 p.m.—Deliberation and Formulation of Board Recommendations—
- RCT Guidance for Tract Delineation and Site-Specific Analysis
- Methodology and Documentation for Tract Ranking and Tract Selection Methodologies
- RCT Particpation in the EIS Scoping Meetings and Other Operational Functions within the Region
- RCT Recommendations for Lease Sale Scheduling

5:00 p.m.—Adjourn

[FR Doc. 80-20707 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Final Decisions on the Intensive Inventory for BLM Lands in the Safford District Contiguous to Coronado National Forest

This notice announces the final wilderness inventory decisions for seven units contiguous to the Coronado National Forest. This decision is issued under the authority of Section 603 of the Federal Land Policy and Management Act of October 21, 1976, and in accordance with the guidelines in the September 27, 1978, BLM Wilderness *Inventory Handbook* and Organic Act Directive No. 78-61, Change 3.

The public comment period for these areas was accelerated ahead of the statewide inventory in order to complete this inventory at an earlier date. This early completion is needed so that the inventory results will be available for a scheduled joint wilderness study with the Coronado National Forest.

By publication in the April 30, 1980, Federal Register, pages 28822 and 28823, the BLM announced the beginning of a 40-day public review and comment period on seven intensive inventory units containing approximately 13,533 acres. The public comment period ended on June 9, 1980. During the public comment period, two public open houses were held. All comments, whether mailed in or presented at a public open house in writing or verbally, as well as late comments received in time to be reviewed before the final decisions were made, were treated equally. They have been read, recorded, analyzed, and, where appropriate, field checked. The final intensive inventory report, including maps is available upon request from either of the following Bureau of Land Management offices: Safford District Office, 425 East 4th Street, Safford, Arizona 85546, phone (602) 428-4040, or Arizona State Office, 2400, Valley Bank Center, Phoenix, Arizona 85073, phone (602) 261-3831.

The following is a summary of the results of the intensive inventory units studied:

Inventory unit No.	Preliminary[1] findings: Acres dropped	Preliminary[1] findings: Acres proposed WSA	Decision[2]: Acres dropped	Decision[2]: Acres WSA
4-66	62	6,617	399	6,156
4-70	2	4,812	———	4,812
4-72	279	———	———	———
4-73	960	———	———	———
4-79	63	———	———	———
4-80	160	———	———	———
4-81	640	———	———	640
Total	1,526	12,069	399	11,608

[1] Before public comment period.
[2] After public comment period.

These decisions will become effective on August 18, 1980, unless timely protests are received by the Arizona State Director. Persons wishing to protest these decisions must file a written protest with the State Director, BLM, Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073, on or before close of business August 18, 1980. Only those protests received by the Arizona State Office by the time and date specified will be accepted.

The protest must specify the inventory unit(s) to which it is directed. It must include a clear and concise statement of the reasons for the protest, as well as data to support the reasons stated.

At the conclusion of the protest period, a Federal Register notice will be published on those decisions that (1) were not protested and, therefore, have become final, and (2) those decisions which are under formal protest. The notice will identify those inventory units under protest and will announce that the decision on the units will not become final pending a decision on the protest and any resulting appeal.

Should protests be filed, the Arizona State Director will consider such protests, issue a written decision, and publish a notice in the Federal Register of the action taken in response to the protest.

Any person adversely affected by the State Director's decision on a written protest, may appeal such decision under the provisions of 43 CFR Part 4.

All Wilderness Study Areas or inventory units under protest or otherwise not formally dropped from further consideration are subject to certain management and use restrictions

as identified in the Interim Management Policy published December 12, 1979.

Clair M. Whitlock,

State Director.

July 3, 1980.

[FR Doc. 20798 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

[CA 8328]

California; Proposed Withdrawal and Reservation of Land

July 1, 1980.

The Water and Power Resources Service, U.S. Department of the Interior, has filed application Serial No. CA 8328 for withdrawal of the following described national forest land from location and entry under the mining laws, subject to valid existing rights, for construction of the Union Hill Reservoir and related facilities, to be built as part of the Federally-constructed water storage and conveyance system for the El Dorado Irrigation District. The reservoir will provide additional water storage, to meet pressing residential demands during the peak summer periods, utilizing presently available water supplies.

Mount Diablo Meridian

T. 11 N., R. 13 E.,

A tract of land in the NE¼SW¼ of Section 32, more particularly described as follows: Beginning at a point in the North-South midsection line of said Section 32 that bears North 00°08'59" West 2388.99 feet from a found capped iron pipe marking the South quarter corner of said Section 32; thence leaving said midsection line South 90°00'00" West 752.46 feet; thence North 00°00'00" East 166.71 feet to a point in the East-West midsection line of said Section 32; last said point bears North 87°56'39" East 1861.89 feet from a found capped iron pipe marking the west quarter corner of said Section 32; thence along said East-West midsection line North 87°56'39" East 752.43 feet to the center of said Section 32; thence along said North-South midsection line South 00°08'59" East 193.70 feet back to the point of beginning.

The area described aggegates approximately 3.11 acreas in El Dorado County, California.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned. Notice of the public hearing will be published in the Federal Register, giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual Section 2351.16.B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the areas sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's, and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the Federal Register. The Secretary's determination shall, in a proper case, be subject to the provisions of Section 204(C) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752.

For a period of two years from the date of publication of this notice in the Federal Register, the lands will be segregated from entry as specified above, unless the application is rejected or the withdrawal is approved prior to that date. If the withdrawal is approved by the Congress, it will be segregated for a period of 20 yers from date of approval, or for such period of time as designated in the Act.

All communications in connection with this proposed withdrawal should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Joan B. Russell,

Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 80-20791 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

[N-29325]

Realty Action—Non-competitive Sale; Public Land in White Pine County, Nev.

July 3, 1980.

The following described land has been examined and identified for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Mount Diablo Meridian

T. 22 N., R. 64 E.,
Sec. 4, W½SW¼SW¼SE¼;
Sec. 9, NE¼NE¼NE¼NW¼,
NW¼NW¼NW¼NE¼.

The above-described land, comprising 10 acres, is being offered as a direct, non-competitive sale to Lyman J. Rosenlund, owner of the adjoining tract and improvements on the sale tract.

In 1957, Mr. Rosenlund purchased 5 acres of land which he mistakenly believed included a service station-bar and out buildings. It was later determined that the improvements were on public land immediately east of the land he had purchased. Disposal by direct sale, rather than public auction, will legalize his occupancy of the land, protect his equity investment in the improvements on the land, and eliminate an undue hardship if he were compelled to remove or otherwise dispose of the improvements.

The sale will resolve a complicated trespass situation. The lands have not been used and are not required for any federal purpose. Disposal would best serve the public interest. The sale is consistent with the Bureau's planning system.

The land will not be offered for sale for at least 60 days after the date of this notice.

Patent, when issued, will contain the following reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. A right-of-way for White Pine County Road No. 18 which traverses section 9.

2. Those rights for highway purposes which have been granted to the State of Nevada, Department of Highways, its successors or assigns, by permit No. CC-022968, under the Act of November 9, 1921, (42 Stat. 212).

3. Those rights for powerline purposes which have been granted to Mt. Wheeler Power, Inc., its successors or assigns, by permit No. N–5485 under the Act or March 4, 1911 (36 Stat. 1253, 43 U.S.C. 961).

4. Those rights granted by oil and gas lease, N–9398, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas lease, N–9398, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

5. Those rights granted by geothermal lease, N–14981, made under the Geothermal Steam Act of 1970, 84 Stat. 1566; 30 U.S.C. 1001–1025. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for geothermal exploration and development operations, without compensation to the patentee for damages resulting from proper geothermal operations, for the duration of geothermal lease, N–14981, and any authorized extension of that lease. Upon termination or relinquishment of said geothermal lease, this reservation shall terminate.

6. Those rights granted by geothermal lease, N–14982, made under the Geothermal Steam Act of 1970, 84 Stat. 1566; 30 U.S.C. 1001–1025. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for geothermal exploration and development operations, without compensation to the patentee for damages resulting from proper geothermal operations, for the duration of geothermal lease, N–14982, and any authorized extension of that lease. Upon termination or relinquishment of said geothermal lease, this reservation shall terminate.

Detailed information concerning the sale is available for review at the Nevada State Office, 300 Booth Street, Reno, Nevada.

For a period of 45 days, interested parties may submit comments to the Secretary of the Interior, BLM–320, Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary, this realty action will become the final determination of the Department of the Interior and the required payment, plus the cost of publishing the notice, shall be requested of Mr. Rosenlund. Such payment, in full, is in accordance with 43 CFR 1822.1–2.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 80-20794 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 187]

Assignment of Hearings

July 2, 1980.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC–102567 (Sub-No. 226F), McNair Transport, Inc., now being assigned for hearing on October 21, 1980 (2 weeks) at Houston, TX at the Lamar Hotel, Main Street at Lamar Avenue.

No. MC–124887 (Sub-No. 71F), Shelton Trucking Service, Inc., is transferred to Modified Procedure.

No. MC–66746 (Sub-No. 23F), Shippers Express, Inc., now being assigned for hearing on September 16, 1980 (9 days) at Jackson, MS location of hearing room will be designated later.

No. MC–82109 (Sub-No. 5F), Louis P. Cote, Inc., is transferred to Modified Procedure.

No. MC–121254 (Sub-No. 2F), O'Leary Transportation Co., Inc., is postponed indefinitely.

No. MC 2754 (Sub-No. 30F), Neuendorf Transportation Company, now assigned for continued hearing on July 8, 1980 (4 Days), at the Concourse Hotel, 1 West Dayton, Madison, WI.

No. MC 125433 (Sub-No. 267F), F–B Truck Line Company, now assigned for hearings on July 14, 1980 at Chicago, IL., is canceled and Application Dismissed.

No. MC 114211 (Sub-No. 411F), Warren Transport, Inc., now assigned for hearing on June 18, 1980 at Washington, DC., is canceled and transferred to Modified Procedure.

No. MC 121596 (Sub-No. 7F), Shelbyville Express, Inc., transferred to Modified Procedure.

No. MC 135070 (Sub-No. 48F), Jay Lines, Inc., now assigned for hearing on July 9, 1980 at Chicago, IL. is canceled and transferred to Modified Procedure.

No. MC 69116 (Sub-No. 232F), Spector Industries, Inc. d/b/a/ Spector Freight System, now assigned for hearing on July 14, 1980 at Washington, DC., is canceled and transferred to Modified Procedure.

No. MC 682 (Sub-No. 16F), Burnham Van Lines, Inc., now assigned for hearing on July 15, 1980 at Atlanta, GA., is canceled and Application Dismissed.

No. MC 4963 (Sub-No. 67F), Jones Motor Company, Inc., now assigned for hearing on June 30, 1980 at Washington, DC., is canceled.

No. MC 114569 (Sub-No. 314F), Shaffer Trucking, Inc., transferred to Modified Procedure.

No. MC 119573 (Sub-No. 15F), Watkins Trucking, Inc., transferred to Modified Procedure.

No. MC 111545 (Sub-No. 286F), Home Transportation Company, Inc., Application Dismissed.

No. MC 57239 (Sub-No. 45F), Renner's Express, Inc., now assigned for hearing on July 21, 1980 at Indianapolis, IN., is canceled and transferred to Modified Procedure.

No. MC 144122 (Sub-No. 50F), Carretta Trucking, Inc., now assigned for hearing on July 22, 1980 will be held in Room No. F–2220, Federal Building, 26 Federal Plaza, New York, NY.

No. MC 59655 (Sub-No. 20F), Sheehan Carriers, Inc., now assigned for hearing on July 23, 1980 will be held in Room No. F–2220, Federal Building, 26 Federal Plaza, New York, NY.

No. MC 61129 (Sub-No. 8F), B & H Freight Lines, Inc., now assigned for hearing on July 7, 1980 at Kansas City, MO., is canceled and reassigned for hearing on July 29, 1980 (1 Week), at the Holiday Inn, At the Junction of Missouri, Highway 13 and US Highway 50, Warrensburg, MO.

No. MC 103051 (Sub-No. 479F), Fleet Transport Company, Inc., transferred to Modified Procedure.

No. MC 118318 (Sub-No. 44F), IDA–CAL Freight Lines, Inc., now being assigned for hearing on September 11, 1980 (2 Days), at Boise, ID. in a hearing room to be designated later.

No. MC 42710 (Sub-No. 15F), Ben's Transfer & Storage Company, Inc., now being assigned for hearing on September 15, 1980 (5 Days), at Boise, ID. in a hearing room to be designated later.

No. MC 144122 (Sub-No. 48F), Carretta Trucking, Inc., now assigned for hearing on July 15, 1980 will be held in Meeting Room "A", Fort Worth Public Library, 300 Taylor Street, Fort Worth, TX.

No. MC 121658 (Sub-No. 13F), Steve D. Thompson Trucking, Inc., now assigned for hearing on July 7, 1980 at Ft. Worth, TX., is canceled and reassigned for hearing on July 7, 1980 (5 Days), at the Le Baron Hotel, 1055 Regal Road, Dallas, TX., and continued to July 14, 1980 (5 Days), at the Ramada Inn, U.S. Highway 165 Bypass, Monroe, LA.

No. MC 145588 (Sub-No. 13F), Gulf Mid-Western, Inc., now assigned for hearing on July 17, 1980 will be held in Meeting Room "A", Fort Worth Public Library, 300 Taylor Street, Fort Worth, TX.

No. MC 121654 (Sub-No. 27F), Coastal Transport & Trading Company, now assigned for hearing on July 9, 1980 at Jacksonville, FL., is canceled and reassigned for hearing on July 9, 1980 (1 Day), at the Desoto Hilton Hotel, 15 East Liberty Street, Savannah, GA.

No. MC 52709 (Sub-No. 363F), Ringsby Truck Lines, Inc., now assigned for hearing on September 15, 1980 at Missoula, MT., is canceled and reassigned for hearing on September 15, 1980 (5 Days), at Spokane, WA in a hearing room to be designated later.

No. MC 61470 (Sub-No. 6F), Bryan Truck Line, Inc., now assigned for hearing on July 9, 1980 at Detroit, MI., is postponed to September 10, 1980 (3 Days), at Detroit, MI., in a hearing room to be designated later.

No. MC 24379 (Sub-No. 54F), Long Transportation Company, now assigned for hearing on July 14, 1980 at Detroit, MI., is postponed to September 15, 1980 (5 Days), at Detroit, MI., in a hearing room to be designated later.

No. MC 71478 (Sub-No. 45F), The Chief Freight Lines Company, now assigned for continued hearing on July 21, 1980 at 11:00 a.m. local time at the Offices of the Interstate Commerce Commission in Washington, DC.

No. MC 147167 F, T. C. Spires, Inc., now being assigned for hearing on September 24, 1980 (3 Days), at Cincinnati, OH., in a hearing room to be designated later.

No. MC 133541 (Sub-No. 8F), McKibben Motor Service, Inc., now being assigned for hearing on September 29, 1980 (2 Days), at Cincinnati, OH., in a hearing room to be designated later.

No. MC 119441 (Sub-No. 50F), Baker Hi-Way Express, Inc., now being assigned for hearing on October 1, 1980 (3 Days), at Cincinnati, OH., in a hearing room to be designated later.

No. MC 145588 (Sub-No. 12F), Gulf Mid-Western, Inc., now being assigned for hearing on September 9, 1980 (1 Day), at Ft. Worth, TX., in a hearing room to be designated later.

No. MC 135070 (Sub-No. 58F), Jay Lines, Inc., now being assigned for hearing on September 10, 1980 (3 Days), at Ft. Worth, TX., in a hearing room to be designated later.

No. MC 52727 (Sub-No. 3F), Ray Bellew, Inc., now being assigned for hearing on September 15, 1980 (5 Days), at Ft. Worth, TX., in a hearing room to be designated later.

No. MC 136711 (Sub-No. 40F), McCorkle Truck Line, Inc., is transferred to Modified Procedure.

No. MC 134755 (Sub-No. 192F), Charter Express, Inc., is transferred to Modified Procedure.

No. MC 142252 (Sub-No. 2F), C. White & Son, Inc., now assigned for hearing on July 10, 1980 at Boston, MA. is canceled and transferred to Modified Procedure.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-20666 Filed 7-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 45F)]

Illinois Central Gulf Railroad Co.; Abandonment Between Rio, La, and Lexie, MS, in Washington Parish, La, and Walthall County, MS

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided April 30, 1980, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company and New Orleans Great Northern Railway Company of those portions of the line of railroad, and operations thereof, extending from milepost 64.8 near Rio, Washington Parish, LA, to milepost 102.0 near Lexie, Walthall County, MS, a distance of 37.2 miles including all yard and sidetracks, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 102 days from June 2, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed and served no later than 15 days after publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail service over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich

Secretary.

[FR Doc. 80-20669 Filed 7-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 29303 (Sub-No. 1), 29370]

Montana Railway Corp.; Purchase (Portion)—Chicago, Milwaukee, St. Paul, & Pacific Railroad Co. (Richard B. Ogilvie, Trustee) and Union Pacific Railroad Co. and Oregon-Washington Railroad & Navigation Co.; Purchase (Portion)—Chicago, Milwaukee, St. Paul, and Pacific Railroad Co. (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Corrected Decision.

SUMMARY: The Commission is correcting its decision, published on June 25, 1980, at 45 FR 42889, dated June 20, 1980, accepting the application of the Montana Railway Corporation and the Union Pacific Railroad Company and Oregon—Washington Railroad & Navigation Company to purchase certain properties of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company.

DATES: This decision shall be effective on the date it is served.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275-6454.

SUPPLEMENTAL INFORMATION: By decision dated June 20, 1980, published on June 25, 1980, at 45 FR 42889, the Commission accepted for consideration the applications of the Montana Railway Corporation and the Union Pacific Railroad Company and Oregon—Washington Railroad & Navigation Company (UP) to purchase certain properties of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, located in the states of WA, ID, and MT. Inadvertently, ordering paragraph number 2 stated the incorrect docket number for UP's application.

Ordering paragraph number 2, on page 42890 should be changed to read as follows:

2. The application in Finance Docket No. 29370 is accepted for consideration.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-20670 Filed 7-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29340 (Sub-No. 1)]

Norfolk and Western Railway Co.; Trackage Rights—Over Consolidated Rail Corp. and Illinois Central Gulf Railroad Co.

NORFOLK AND WESTERN RAILWAY COMPANY (NW), 8 North Jefferson Street, Roanoke, VA 24042, represented by John S. Shannon, Vice President—Law, Norfolk and Western Railway Company, Roanoke, VA 24042, hereby gives notice that on the 17th day of June, 1980, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 for authority to acquire trackage rights over the tracks of Consolidated Rail Corporation (Conrail) extending between milepost 115.4 at Main Street in Urbana, IL and milepost 118.5 at Randolph Street in Champaign, IL, a distance of approximately 3.1 miles, and over the tracks of Illinois Central Gulf Railroad Company (ICG) between milepost 0.48 at Randolph Street and milepost 1.06 just east of Prospect Avenue, all in Champaign, IL, a distance of approximately .58 miles. The trackage rights will be bridge rights only.

Applicant is operating under Service Order No. 1470 served May 9, 1980.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat'l Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 29340 (Sub-No. 1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20424, not later than 45 days after the date notice of the filing of the application is published in the Federal Register. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-20667 Filed 7-10-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29197F]

Pend Oreille Valley Railroad, Inc.; Operation of a Line of Railroad in Pend Oreille County, Wash.

PEND OREILLE VALLEY RAILROAD, INC., represented by Fritz R. Kahn, Esquire and Steven H. Dorne, Esquire, Verner, Liipfert, Bernhard and McPherson, 1660 L Street, N.W., Suite 1100, Washington, DC 20036, hereby gives notice that on the 9th day of December, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 10901 for authority to operate a line of railroad formerly owned and operated by the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW).

The line begins at milepost 43.6 at Newport, Pend Oreille County, WA, and extends in a northwesterly direction to milepost 104.7 at Metaline Falls, Pend Oreille County, WA for a total fo 61.1 miles.

Applicant is a wholly-owned subsidiary of Kyle Railways, Inc., and is operating under Service Order No. 1399, served September 26, 1979. This proceeding is directly related to Finance Docket No. 29198 (Sub-No. 1).

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat'l Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. *See Implementation—Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th

and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-20668 Filed 7-10-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-68]

Certain Surveying Devices; Commission Determination and Order

Notice is hereby given that the Commission, upon consideration of the presiding officer's recommended determination and the record in this proceeding, investigation No. 337-TA-68, Certain Surveying Devices, has determined (Chairman Alberger and Commissioner Stern dissenting) that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain surveying devices which infringe the sole claim of U.S. Letters Patent 3,172,205, and has ordered that infringing surveying devices be excluded from entry into the United States for the term of the patent (until Mar. 9, 1982), unless the importation is licensed by the patent owner. The Commission also ordered that the surveying devices ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 32 percent ad valorem during the period that this action is pending before the President.

The Commission's order is effective on the date of publication of this notice in the Federal Register (July 11, 1980). Any party wishing to petition for reconsideration must do so within fourteen (14) days of service of the Commission determination. Such petitions must be in accord with § 210.56 of the Commission rules (19 CFR 210.56). Any person adversely affected by a final Commission determination may appeal such determination to the United States Court of Customs and Patent Appeals.

Copies of the Commission's Determination, Order, and Memorandum Opinion (USITC Publication 1085, July 1980) are available to the public during official working hours at the Office of the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone (202) 523-0161. Notice of the institution of the Commission's investigation was published in the Federal Register of July 5, 1979 (44 FR 39315).

By order of the Commission.

Issued: July 7, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-20671 Filed 7-10-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Attorney General

Proposed Consent Decree in Action To Enjoin Violations of an NPDES Permit by Barnes Worsteds, Inc.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on June 4, 1980, a proposed consent decree in *United States* v. *Barnes Worsteds, Inc.* (D. Mass. No. 75-4304-T), was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree covers a textile mill in Massachusetts, and it requires the corporation to bring its textile mill into compliance with its permit and the requirements of the Clean Water Act. In addition, it provides for payment of a civil penalty to the United States in the amount of $500 for each calendar day after the effective date of this decree that it fails to comply with said permit.

The proposed consent decree may be examined at the Clerk's office, U.S. Post Office and Courthouse, Congress Street, Boston, Massachusetts 02109 and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Division, Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree until August 11, 1980. Comments should be addressed to the Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Barnes Worsteds, Inc.* (D. Mass. No. 75-4304-T), D. J. Ref. 90-5-1-1-471.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-20795 Filed 7-10-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-58-M]

Cargill Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cargill Incorporated, Post Office Box 339, Patterson, Louisiana 70392 has filed a petition to modify the application of 30 CFR 57.21-46 (gassy mines-ventilation) to its Belle Isle Mine located in St. Mary Parish, Louisiana, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitioner is mining domal salt. Because of the geologic structure of the domal salt formation there are no physical restrictions on heading dimensions or types of mining equipment used. The mine was designed with 80 foot floor-to-ceiling heights having pillar dimensions based on a width to height ratio of 2 to 1 so that large equipment could be used effectively. The design and operation is a departure from conventional mining and is unique to salt domal mining.

2. The petitioner's mine was classified gassy in June 1979, and it is now subject to all of the mandatory standards of 30 CFR 57.21. These standards, the petitioner alleges, do not allow for mining on the scale and dimensions practiced by the petitioner. Application of these standards to the petitioner's mine would necessitate redesign of the mine, methods of operation, and limit the size of equipment used. For example, either the width to height ratio of 2:1 for pillar dimensions would have to be reduced to a less safe ratio of 1.25:1, or the roof height would have to be limited to 50 feet under 30 CFR 57.21-46, and heading widths would have to be held to a maximum of 40 to 50 feet. Thus, its large 50 ton haulage units and front-end loaders of 12 yards capacity would be rendered unusable.

3. As an alternative to the application of 30 CFR 57.21-46, the petitioner proposes to:

a. Make crosscuts at intervals that will result in centerline distances of approximately 230 feet for those crosscuts made between rooms with such room widths and crosscut width being approximately 70 feet in distance;

b. Make crosscuts in accordance with the mine plan at the earliest opportunity without requiring the crosscut to hole through before advancing the room face 35 feet beyond the next centerline.

c. Perform face advance blasting with no miners underground.

d. Use only permissible equipment during periods when drilling and cutting are being done. The permissible equipment will contain methane monitoring devices allowing electrical de-energization of such equipment.

e. Provide suitable means of face ventilation during all drilling and cutting activities.

f. Perform periodic methane spot checks of the ventilation air streams during cutting and drilling operations. Records of such methane spot checks will be kept and be available to any interested person.

6. The described alternative to application of 30 CFR 57.21–46 will achieve the same result as the mandatory standard and it will at all times guarantee the miners no less than the same measure of protection afforded by the standard, the petitioner states.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 27, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20514 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-93-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company (Consol), Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1403–9 (criteria-shelter holes) to its Humphrey No. 7 Mine located in Monongalia County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The portal haulage track is old; it has been in existence since 1970. The roof in crosscuts shows extreme deterioration. Workers engaged in removing fallen material, etc., could be exposed unnecessarily to a hazardous roof condition. To establish shelter holes in existing coal pillars would disturb the auxiliary roof support and create a hazardous roof condition.

2. As an alternative to the requirements of 30 CFR 75.1403–9 the petitioner proposes to designate and maintain strategically located crosscuts having controllable roof conditions as positive security areas along the portal track. The track will not be used for coal haulage at any time. No person shall enter this area without permission from the dispatcher. If a dispatcher permits a person to travel in the area on foot, haulage equipment shall not be permitted to travel through this entry until the pedestrian has informed the dispatcher that he or she is in the clear. Should the operator of mobile equipment see a pedestrian, he or she will stop the equipment until the person passes by the equipment, or gets in the clear.

3. The petitioner states that the proposed alternative procedure will provide no less than the same measure of protection as 30 CFR 75.1403–9.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 27, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20448 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-94-C]

Emery Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Emery Mining Corporation, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air; separation from belt and trolley haulage entries) to its Deer Creek Mine located in Emery County, Utah, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Trolley haulage is in general use throughout the petitioner's longwall mine. Track haulage is necessary because of local softness of the floor and the heavy loads carried. The petitioner found battery-powered locomotives to be unreliable and diesel-powered equipment was rejected by miners.

2. Adoption of trolley haulage in the longwall entries would eliminate exposure to the present hazards of unloading and reloading when transferring materials from one transportation system to another. Also, miners could be transported in mantrips down the center of the entry away from the hazard of rib sloughage. In the event of an emergency, dependable, speedy, and safe transportation would be available to personnel.

3. The coal seam is sufficiently thick to allow proper ventilation through a single entry for adequate dilution of methane and respirable dust. Roof stresses can be distributed to solid blocks of coal rather than to chain pillars.

4. As an alternative to the application of 30 CFR 75.1707, the petitioner proposes to use the escapeway ventilated by intake air as a trolley haulageway in each longwall entry while employing the following measures:

a. Each longwall trolley system would be powered by a rectifier that is separate from and independent of the general main trolley system, but with an alternative of receiving power from the general main trolley system through an automatic circuit breaker.

b. The longwall trolley system would be energized and used only after persons in the working section are alerted by a warning light. The motorman would telephone inby personnel to close an interlock inby switch so the outby switch could energize the trolley system.

c. At the beginning of a shift, only a responsible person designated by management would be permitted to energize the trolley system. The trolley system would be deenergized when not in use and at the end of each shift when miners leave the working section.

d. Automatic fire warning devices would be installed along the entire length of the longwall trolley systems. They will comply with the requirements of 30 CFR 75.1103 as applicable. The devices will alert miners at the face and along the entry of a fire in the entry, and would automatically deenergize the trolley in the entry. The petitioner also would install fire extinguishers and fire suppression equipment at a number of specified places.

5. The petitioner alleges that the proposed alternative will not result in a diminution of safety to the miners, and at all times it will guarantee no less than the same measure of protection as afforded them by application of 30 CFR 75.1707.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 26, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20447 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-57-M]

Occidental Oil Shale, Inc.; Petition for Modification of Application Mandatory Safety Standard

Occidental Oil Shale, Inc., a division of Occidental Petroleum, P.O. Box 2687, Grand Junction, Colorado 81501 had filed a petition to modify the application of 30 CFR 55.9-2 (loading, hauling, dumping) to its Logan Wash Mine located in Garfield County, near DeBeque, Colorado, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petitioner has operated six (6) modified insitu retorts underground in the past years under variances granted through a Colorado State Plan agreement with the Mining Enforcement and Safety Administration (MESA), Department of the Interior. An operating stricture of one and one half (1½) percent oxygen (wet basis) limit in the retort off-gas stream was established. This limit was acceptable for the single retort tests being conducted. A higher limit is needed now for a commercialization demonstration.

2. On September 2, 1977, the petitioner requested raising the permissible limit for oxygen to 4.5 percent by volume (wet basis). The Mine Safety and Health Administration (MSHA, formerly MESA) denied the request until explosibility test data was available. Under contract to the petitioner, Allegany Ballistics Laboratory established that oxygen off-gas mixtures containing less than nine (9) percent oxygen by volume (wet basis) are not explosive when the concentration of all combustibles exceeds the lower explosive limit (calculated) of the mixture.

3. The petitioner proposes to modify application of 30 CFR 57.4-58 to permit one to four weeks of operation for each of two (2) small-scale retorts (only one burner is to be test operated at a time) underground for the purpose of evaluating the newly designed retort ignition burners. Burner fuel will be either shale oil or diesel fuel.

4. A number of safeguards are described, including monitoring for various gases such as nitrogen, hydrogen, and methane; ventilation proposals; rescue equipment and training; and evacuation and contingency plans.

5. Based on extensive experience over the years, the petitioner states that all anticipated relevant factors have been taken into account to guarantee the greatest degree of safety during retort operations and that these will provide miners the same degree of protection as afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard. Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 27, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20446 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-87-C]

United Castle Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

United Castle Coal Company, Route 1, Box 523, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1701 (Abandoned areas, adjacent mines; drilling of bore holes) to its No. 1 Mine located in Wise County, Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitioner is drilling 20 foot deep holes in ribs at a 45 degree angle and 20 foot deep holes straight ahead in the face, because it is approaching an abandoned mine which is inaccessible for inspection and which is known to contain an accumulation of water.

2. Mine maps of the abandoned mine are old and may not be accurate.

3. As an alternative to application of 30 CFR 75.1701, the petitioner proposes to drill a 30 foot rib hole at 45 degrees, and another 30 foot rib hole at 22½ degrees, and three 30 foot straight ahead holes in the face. Scaled diagrams of both the present and the proposed alternate method for drilling are given.

4. The petitioner states that the alternate method will permit a 20 foot deep cut that is 20 feet wide, whereas the present method allows only an 8 foot deep cut that is 20 feet wide.

5. The petitioner states that with the alternate method, there would not be any area between entries that would not be explored, and that the space at the deepest penetration of the mine in the next cut would only be nine feet between drilled holes. With the present method, a crosscut must be drilled before cutting entries, and a space of 10 feet would be left unexplored between the 45 degree rib hold and the nearest straight ahead hole if measured at the spot of deepest penetration of the miner in the next cut.

6. If the parallel entry has not advanced to the point where the crosscut would cut through, the petitioner proposes to drill holes in the crosscut to insure that coal would not be removed from an unexplored area.

7. The petitioner alleges that the proposed alternate method of drilling would provide a greater margin of safety for miners because all of the area would be explored by drilling while advancing the face.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 27, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20449 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-55-M]

Cargill Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cargill Incorporated, Box 339, Patterson, Louisiana 70392 has filed a petition to modify the application of 30 CFR 57.21-78 (gassy mines—equipment) to its Belle Isle Mine located in St. Mary Parish, Louisiana, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The mine has two major entries. One lies directly below the other. Both entries are 50 feet wide and 22 feet high, and they are separated by a 36 foot mantle of salt. The mantle separating them is open intermittently to accomodate transfer belt conveyors and product storage areas. The two entries are each approximately 2,500 feet in length, and are on exhaust air. Non-permissible electrically powered roll crushers, screen banks, electrical load centers, and conveyor systems are located in them.

2. Reversing the ventilation system is considered impractical and hazardous.

3. As an alternative to application of 30 CFR 57.21–78, the petitioner proposes to install certain methane monitoring equipment and to institute a number of precautions and practices while continuing to operate the existing non-permissible stationary equipment in exhaust air for a period of three years.

4. The petitioner states that it believes the proposed alternative will achieve the same results as application of 30 CFR 57.21–78 and at all times will guarantee miners no less protection than that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: July 3, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20760 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-101-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., Post Office Box C–79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 5 Mine located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The standard generally prohibits using belt haulage entries to ventilate active working places.

2. Conditions in the No. 5 Mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face, and to remove the methane from the return airways.

3. Due to the great quantity of methane liberated from the coal, the limited air velocity in the belt entries creates a high risk that pockets of methane will accumulate in dead air spaces in the belt entries. These dangerous methane accumulations can be prevented by positive ventilation.

4. To prevent methane accumulation and to further dilute the high quantities of methane occasionally occurring at working faces, petitioner proposes to direct intake air through belt entries and into working places.

5. Additionally, petitioner will:

(a) Isolate the belt entries used as intake entries from other intake and return entries with continuous stoppings;

(b) Install a CO monitoring system in all belt entries used as intake entries;

(c) Install a surface terminal to receive CO monitor data; and

(d) Install a communication system from the surface to all miners who could be endangered.

6. Petitioner states the alternate method better achieves the purpose of and at all times offers at least the same protection as the above standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: July 3, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20762 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-100-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., Post Office Box C–79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 7 Mine located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The standard generally prohibits using belt haulage entries to ventilate active working places.

2. Conditions in the No. 7 Mine require high volumes of intake air to dilute the large quantity of methane liberated from the coal at the working face, and to remove the methane from the return airways.

3. Due to the great quantity of methane liberated from the coal, the limited air velocity in the belt entries creates a high risk that pockets of methane will accumulate in dead air spaces in the belt entries. These dangerous methane accumulations can be prevented by positive ventilation.

4. To prevent methane accumulation and to further dilute the high quantities of methane occasionally occuring at working faces, petitioner proposes to direct intake air through belt entries and into working places.

5. Additionally, petitioner will

(a) Isolate the belt entries used as intake entries from other intake and return entries with continuous stoppings;

(b) Install a CO monitoring system in all belt entries used as intake entries;

(c) Install a surface terminal to receive CO monitor data; and

(d) Install a communication system from the surface to all miners who could be endangered.

6. Petitioner states the alternate method better achieves the purpose of and at all times offers at least the same protection as the above standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: July 3, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20763 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-90-C]

Kickapoo Coal; Petition for Modification of Application of Mandatory Safety Standard

Kickapoo Coal, Route 586, Box 31, Monticello, Kentucky 42633 has filed a

petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its mine located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the installation and use of cabs and canopies on the petitioner's scoop, roof bolter and continuous miners.

2. The coal bed ranges in thickness from 58" to 10" with rolling bottom conditions.

3. The roof control plan calls for full bolting.

4. Cabs and canopies interfere with the equipment operator's vision, limiting his or her ability to see poor roof conditions as well as other nearby workers, resulting in a diminution of safety.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before August 11, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: July 3, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-20761 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-7873]

General Electric Co.; Engineered Cast Products Department, Elmira, N.Y., Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was intitated on April 28, 1980 in response to a petition received on April 18, 1980 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers at General Electric Company, Engineered Cast Products Department, Elmira, New York. The workers produced castings for turbines and cylinder jackets for locomotive engines.

On March 24, 1980 a petition filed by the United Electrical, Radio and Machine Workers of America on behalf of the same group of workers was received (TA-W-7546). On June 11, 1980 workers of General Electric Company, Engineered Cast Products Department, Elmira, New York were certified eligible to apply for trade adjustment assistant.

Since the identical group of workers was certified eligible to apply for trade adjustment assistance under petition TA-W-7546, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-20450 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

Occupational Safety and Health Administration

[V-78-12; V-79-1]

General Motors Corp.; Grant of variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Grant of Variance.

SUMMARY: OSHA has granted the General Motors Corporation's application for a permanent variance from certain paragraphs of 29 CFR 1910.1025, Occupational Exposure to lead, and 29 CFR 1910.1018, Occupational Exposure to Inorganic Arsenic.

DATES: The effective date of this grant of variance is July 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Room N3662, Washington, D.C. 20210, Telephone: (202) 523-7144.

or the following Regional and Area Offices

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building—Room 1804, Government Center, Boston, Mass. 02203.

U.S. Department of Labor, Occupational Safety and Health Administration, 400-2 Totten Pond Road—2nd Floor, Waltham, Mass. 01254.

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, NY 10036.

U.S. Department of Labor, Occupational Safety and Health Administration, 200 Mamanoneck Avenue—Room 302, White Plains, NY 10601.

U.S. Department of Labor, Occupational Safety and Health Administration, 2E Blackwell Street, Dover, NJ 07801.

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Penn. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street N.E.—Suite 587, Atlanta, Ga. 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, Building 10—Suite 33, 33 La Vista Perimeter Office Park, Tucker, Ga. 30084.

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor—Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 231 West Lafayette—Room 628, Detroit, Mich. 48226.

U.S. Department of Labor, Occupational Safety and Health Administration, Clark Building—Room 400, 633 West Wisconsin Avenue, Milwaukee, Wis. 53203.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building—Room 4028, 550 Main Street, Cincinnati, Ohio 45202.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building—Room 847, 1240 East Ninth Street, Cleveland, Ohio 44199.

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building—Room 602, Dallas, Tex. 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, 1425 W. Pioneer Drive, Irving, Tex. 75061.

U.S. Department of Labor, Occupational Safety and Health Administration, 50 Penn Place—Suite 408, Oklahoma City, Okla. 73118.

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 3000, Kansas City, Mo. 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard—Room 520, St. Louis, Mo. 63101.

U.S. Department of Labor, Occupational Safety and Health Administration, 1150 Grand Building, Kansas City, Mo. 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, P.O. Box 36017, San Francisco, Calif. 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, 211 Main Street, San Francisco, Calif. 94105.

U.S. Department of Labor, Occupational Safety and Health Administration, 400 Oceangate, Suite 530, Long Beach, Calif. 90802.

I. Background

On May 3, 1978, The Occupational Safety and Health Administration, ("OSHA") issued an occupational safety and health standard for exposure to inorganic arsenic [29 CFR 1910.1018; 43 FR 19584, May 5, 1978]. In September, 1978.

General Motors Corporation ("GM") applied, pursuant to section 6(d) of the Occupational Safety and Health Act [29 U.S.C. 655(d)] and 29 CFR 1905.11, for a permanent variance from several provisions of the standard. GM also requested an interim order pending a decision on the application.

An occupational safety and health standard for exposure to lead was issued on November 13, 1978 [29 CFR 1910.1025; 43 FR 52952, November 14, 1978]. GM applied on January 8, 1979, for a variance from several provisions of the lead standard and an interim order pending a decision on the application.

Both variance applications pertain to the lead and inorganic arsenic exposure that occurs on the automobile assembly line during the soldering process. With concurrence of GM, OSHA consolidated the individual applications for consideration and disposition.

The addresses of the places of employment affected by the applications for inorganic arsenic and lead are as follows:

General Motors Corporation, Fisher Body Division
Detroit Fleetwood, W. Fort & W. End, Detroit, Mich.
Lansing, 401 Verlinden Avenue, Lansing, Mich.
Pontiac, 900 Baldwin Avenue, Pontiac, Mich.
Detroit Control Plant, 6051 Hastings Street, Detroit, Mich.
Assembly Division Plants
Arlington, 2525 E. Abram Street, Arlington, Tex.
Baltimore, 2122 Broening Highway, Baltimore, Md.
Doraville, 3900 Motors Industrial Way, Doraville, Ga.
Fairfax, 100 Kindelberger Road, Kansas City, Kans.
Framingham Western Avenue, Framingham, Mass.
Fremont, 45500 Fremont Boulevard, Fremont, Calif.
Janesville, 1000 Industrial Drive, Janesville, Ohio
Lakewood, McDonough & Sawtell, Atlanta, Ga.
Leeds, 6817 Stadium Drive, Kansas City, Mo.
Linden, 1016 West Edgar Road, Linden, N.J.
Lordstown, 1600 Hallock Young Road, Lordstown, Ohio.
Norwood, 4726 Smith Road, Norwood, Ohio.
Oklahoma City, 7447 SE 74th Street, Oklahoma City, Okla.
St. Louis, 3809 N. Union Boulevard, St. Louis, Mo.
Southgate, 2700 Tweedy Boulevard, Southgate, Calif.
Tarrytown, Beekman Avenue, Tarrytown, N.Y.
Van Nuys, 8000 Van Nuys Boulevard, Van Nuys, Calif.
Willow Run, 2625 Tyler Road, Ypsilanti, Mich.
Wilmington, Boxwood Road, Wilmington, Del.

In addition, the applicant has asked to have the variance extended to any future facilities which have solder grind booths operating in the same manner as existing ones.

An interim order pending the decision on GM's application for variance from the inorganic arsenic standard was granted on November 17, 1978. Notice of the GM application for variance and for the interim order, and of the grant of the request for an interim order was published in the Federal Register on November 17, 1978 [43 FR 53847–49]. An interim order covering the lead standard was subsequently granted on February 2, 1979. Notice of the GM application for variance from the lead standard and for the interim order, and notice of the grant of a lead interim order and of the renewal of the first interim order concerning inorganic arsenic, was printed in the Federal Register on February 2, 1979. [44 FR 6791–95]. Both notices invited interested persons to submit written data, views, and arguments regarding the grant or denial of the variances requested. In addition, affected employers and employees were notified of their right to request hearings on the applications for variance. The General Motors Corporation requested a hearing in the event that the consolidated variance application was denied. The February 2, 1979 notice announced that additional data and information had been requested from GM to supplement the data submitted with the original variance applications to enable OSHA to reach a decision on the variance. In addition to the data generated by GM, OSHA conducted several variance investigations at GM facilities to gather additional information. Throughout the variance process, OSHA, GM, and the UAW met several times to discuss the GM application. These meetings provided more information to the record of the proceeding and served as a vehicle for revising the original application so that a complete protective program acceptable to OSHA, as reflected by the variance order, was developed. Discussions were also held with the Chrysler Corporation and Ford Motor Company, both of whom have submitted similar applications for variance. Interim orders have been issued to these applicants [43 FR 53847–49, Novermber 17, 1978; 44 FR 6791–95, February 2, 1979; 45 FR 10972–75, February 19, 1980] and a decision on a permanent variance is pending.

Two comments were received with regard to the request for variance from the inorganic arsenic standard from the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), the employee representative in the affected facilities. The UAW disagreed with much of GM's rationale and reserved the right to request a hearing. The UAW stated further that, considering the interrelationship between occupational exposure to inorganic arsenic and lead in the automobile industry, should GM file an application as to the lead standard, they would request consolidation of the hearings on the two applications.

Two comments from solder grind booth workers employed by GM were received concerning the applicant's request for variance from the lead standard. One comment concerned the alleged ineffectiveness of the Company's enforcement of the present requirement, particularly regarding the cleanliness of the respirators. The writer requested a hearing on the application, but later withdrew this request when he became aware that the UAW had formally reserved the right to request a hearing on both the inorganic arsenic and lead applications. The second comment detailed allegedly inadequate safety and health conditions in his plant affecting solder grinders, and expressed concern for his family's exposure to lead. The OSHA Regional Office was made aware of these alleged conditions.

On March 1, 1979, the U.S. Court of Appeals for the District of Columbia Circuit judicially stayed certain provisions of the lead standard (*United Steelworkers of America, AFL–CIO–CLC* v. *Marshall*, No. 79–1048 (D.C. Circuit, March 1, 1979)). Notice of the partial judicial stay was published in the Federal Register on March 13, 1979 (44 FR 14554). GM has requested variance from several provisions of the lead standard which have been judicially stayed. The stayed provisions are 1910.1025(e)(1); 1910.1025(e)(3) except for (e)(3)(ii)(F); 1910.1025(i), as it applies to construction of new facilities or substantial renovation of existing facilities; and 1910.1025(r), as it applies to other provisions of the standard.

II. Facts

A. The Soldering Process

The applicant is a manufacturer of automobiles. The assembly of some automobile bodies necessitates application of solder to certain welded joints. Lead solder is principally used to fill depressed, welded joints between body panels to achieve durable, finely-sculptured body surfaces after final paint.

The soldering process is performed in the body shop on the assembled body

shell. Joint soldering and grinding is one of the final steps in body assemblying and construction performed prior to hanging and fitting of door and trunk lid assemblies. Additional welding and metal finishing takes place prior to transfer to the paint shops for painting.

Typically, an automotive body has eight to ten joints that require a solder fill. If a joint is scheduled to be covered with vinyl roof covers, a substitute filler is used since final paint appearance is not a factor.

The welded automobile body proceeds along the body shop conveyor to the soldering area and is processed in the following steps:

1. *Joint Preparation.*

The first step is to inspect and caulk the joint to insure proper alignment of the adjacent panels and joint metal. Next, the joint area is rough ground and wire brushed to smooth the metal and remove excess chips, dirt and any coatings on the steel. The joint is then solvent wiped if required.

2. *Tinning.*

Joint preparation is immediately followed by chemical cleaning and coating of the joint with a thin layer of closely-adhering tin to which the lead solder will subsequently bond.

This operation is performed by wiping-on a tin-rich flux compound while heating the metal surface with a hand held torch to promote reaction with the surface of the steel. This is immediately followed by rag wiping the coated surface, leaving only a thin shiny coating of tin.

3. *Solder Fill.*

The tinned joint is now filled with solder which has been prepared by heating to a mush-like consistency. Prior to application, the body joint is fanned with a torch to raise the temperature to avoid cold shock and poor adhesion of the solder. The employee performing this operation is skilled in filling, heating and contouring the solder on the body to produce a joint ready for minimal grinding.

4. *Solder Grind.*

The cooled joint is sculptured to exact body contour through rough and finished grinding using rotary disc, hand-held grinders in enclosed solder grind booths. These booths vary from about 100 to 200 feet in length, and can accomodate several car bodies with about six feet of work space on either side. The booths are operated under negative pressure with a designed minimum in-draft of 150 feet per minute into all openings of the booth. The booths are vented by drawing outside air into the booth and exhausting it through an enclosed system through the roof of the plant.

Workers then utilize grinding and finishing tools to remove excess solder and smooth the finish. The first operator in the line uses a relatively coarse abrasive; subsequent employees use a smoother finishing process as the car body passes through the booth.

During the grinding operation, particles of solder are released into the atmosphere of the solder grind booth at very high velocities. According to material specifications, the body solder used by GM contains arsenic in quantities of up to 0.6 percent and approximately 92 percent lead. Thus, whenever workers are exposed to lead from soldering applications, there is concurrent exposure to inorganic arsenic. To protect solder grind operators in the booth from the toxic dusts and the hot, high-velocity particles, these operators wear positive pressure supplied-air hoods which extend downward to cover the waist. Flaps covering the front and back fasten under the arms and around the waist. An inner bib is located around the neck of the wearer.

5. *Subsequent Operations.*

The car body is then cleaned either by washing or wiping. The body then proceeds for door hanging and fitting, final stud welding, and metal finishing and polishing stations.

Some provisions are made in all body shops for a variety of repair operations. All lines provide a final body wash and blow-off of body shop dirt, dust and debris prior to the acid bath which prepares the car body for painting (Bonderite), and the paint shop.

B. Application for Variance

GM's application for a variance applies to workers in the soldering process. The applicant proposes to provide a place of employment as safe as that required by 29 CFR 1910.1018, which contains regulations concerning inorganic arsenic and by 29 CFR 1910.1025, which contains regulations concerning lead.

Specifically, the applicant requested variance from several provisions of the lead standard, as follows:

Sections 1910.1025(e)(1) and (e)(3) of the standard deal with engineering and work practice controls, and compliance programs, respectively, as they pertain to methods of compliance. In part, these provisions require that employers implement engineering and work practice controls to reduce and maintain employee exposure to lead consistent with levels required by the standard, and establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit ("PEL") solely by means of engineering and work practice controls. The applicant requested a variance from these provisions insofar as they pertain to every work station within the solder grind booth, and the assembly line between the solder application and the Bonderite operations.

Section 1910.1025(i) of the standard relates to hygiene facilities and practices and deals, in part, with requirements for the provision and use of change rooms, showers, lunchrooms, and lavatories in areas where employees are exposed to lead above the PEL without regard to the use of respirators. The applicant requested a variance from this section insofar as it requires special hygiene facilities other than lavatories for solder applicators and employees on the line between the solder grind booth and the Bonderite operation.

Section 1910.1025(i)(4) of the standard specifies requirements for hygiene facilities and practices including lunchrooms. Specifically, employers are required to provide temperature controlled, positive pressure, filtered air supplied lunchrooms, readily accessible to employees who work in areas where their airborne exposure to lead is above the PEL without regard to the use of respirators. The applicant requested a grant of variance from this section insofar as it required these lunchroom.

Section 1910.1025(d)(1) deals with the general requirements for exposure monitoring and defines, for those purposes, employee exposure as that exposure which would occur if employees were not using a respirator. GM requested a variance from this section, insofar as it requires monitoring of air levels of lead within the solder grind booths, without regard to a respirator.

Section 1910.1025(d)(1)(ii) and (iii) require, in part, that the employer collect full shift personal samples including at least one sample for each shift for each job classification in each work area, and that these samples be representative of a monitored employee's regular, daily exposure to lead. The applicant requested variance from these provisions insofar as they require full-shift monitoring for employees on the assembly line.

Section 1910.1015(g)(2)(viii) is concerned with the prohibition for the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air. The applicant requested a variance from this section insofar as it necessitates vacuuming of clothers when employees leave the solder grind booths.

Section 1910.1025(f)(2)(i) deals with respirator selection where respirators are required. The applicant requested a variance from this section insofar as it might be construed to prohibit supervisors spending intermittent periods in the solder grind booths from wearing half-mask, air-purifying respirators.

Section 1910.1025(r) deals with start up dates, requiring all obligations of the standard to commence on the effective date except for such requirements as hygiene facilities and compliance programs. The applicant requested relief from any obligation of this section from which the variance was requested.

Specifically, the applicant requested variance from several provisions of the inorganic arsenic standard, as follows:

Section 1910.1018(e)(1)(ii) defines employee exposure to inorganic arsenic as the exposure which would occur if the employee were not wearing a respirator.

Section 1910.1018(e)(1)(iii) requires collections of full shift (at least 7 continuous hours) personal sampling including at least one sample for each shift for each job classification in each work area.

Section 1910.1018(g)(1) requires the institution of engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible; and

Section 1910.1018(g)(2) requires the establishment and implementation of a written compliance program for reducing exposures. The applicant requested variance from the requirement for using engineering and work practice controls to reduce employee exposure in the solder grind booths and from the requirement to develop written compliance programs.

Section 1910.1018(h)(2) contains the requirements for respirator selection, including a table which lists the required respirators for various concentrations of airborne inorganic arsenic. The applicant requested variance from this section to permit supervisors to wear half facepiece, filter-type respirators approved for toxic dust, with a high-efficiency filter if necessary.

Section 1910.1018(m)(3)(i) requires that employers provide readily accessible lunchrooms with temperature controlled, positive pressure, filtered air supply for employees working in regulated areas.

Section 1910.1018(m)(5) requires that employers provide and assure the use of facilities for employees, working in regulated areas where exposure (without the use of respirators) exceeds 100 ug/m^3, to vacuum their protective clothing and clean or change shoes before entering change rooms, lunchrooms or showers. The applicant requested a variance from this section insofar as it limits the cleaning process to the use of vacuum.

Section 1910.1018(n) requires physical examinations of employees exposed above the action level without regard to the use of respirators, either annally or semi-annually, depending on length and level of exposure. The applicant requested a variance from this section insofar as it requires semi-annual medical examinations.

III Decision

GM's applications for variance were submitted shortly after the inorganic arsenic and lead standards were issued. The supporting data submitted at the early stages of the proceeding were deemed sufficient for granting an interim order, but OSHA concluded that more supporting data were necessary before a permanent variance could be granted. GM collected the additional information as requested and provided it to OSHA. OSHA conducted variance investigations at several GM assembly facilities to obtain more information it deemed necessary to make a final determination in the consolidated application. Extensive discussions were held with the Company and the UAW at various stages of the proceeding regarding the proposed GM program of worker protection. After careful consideration of the entire variance record and of the records in the lead and inorganic arsenic rulemakings, OSHA concluded that GM's original request could not be granted in its entirety as it did not meet the statutory criterion for a permanent variance.

However, at the core of GM's variance request was a voluntary commitment on the part of the Company to a progam of eliminating inorganic arsenic and lead exposure associated with solder grinding (see application for lead variance, pp. 2-3), and OSHA agrees with GM that the ultimate elimination of inorganic arsenic and lead exposure will offer the "fullest and surest protection to employee health." That commitment and the unlikelihood of GM finding an engineering control solution as effective as total elimination of lead exposure in the standard's one year compliance period fostered a cooperative effort among OSHA, the UAW, and the Company to promote that goal by finding an acceptable interim solution until the company's effort to eliminate inorganic arsenic and lead exposure could be completed.

After numerous discussions, agreement was reached on a comprehensive variance program which OSHA concluded would provide workers with protection equivalent to that provided by the lead and arsenic standards. This program is embodied in the variance order issued today. GM's agreement to abide by the terms of the variance order is taken by OSHA to be an implicit revision of the original applications so as to incorporate only the terms of the order, thereby allowing a complete grant of the applications as revised. GM has also agreed, as has the UAW, to withdraw their requests for hearing. Certain items in the original applications for which a variance was requested are not addressed in the Order. With respect to these items, GM has agreed to have the relevant provisions of the lead and inorganic arsenic standards apply, and OSHA has treated these items as having been withdrawn. A discussion of these issues is found in the appropriate paragraphs below.

The variance order issued to GM today permits the Company to comply with the numbered terms and conditions set forth in the variance order instead of the following requirements in the lead and arsenic standards:

29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii), concerning employee exposure for monitoring purposes; 29 CFR 1910.1025(d)(1)(ii) and 29 CFR 1910.1018(e)(1)(iii), concerning full-shift monitoring; 29 CFR 1910.1025(e)(1) and 29 CFR 1910.1018(g)(1)(i) and 29 CFR 1910.1018(g)(1)(ii), concerning engineering and work practice controls as they pertain to methods of compliance; 29 CFR 1910.1025(g)(2)(viii) and 29 CFR 1910.1018(j)(2)(viii), concerning the prohibition for lead removal from protective clothing or equipment by blowing, shaking or any means which disperses lead into the air and for removal of inorganic arsenic by blowing or shaking; 29 CFR 1910.1025(i)(4)(ii) and 29 CFR 1910.1018(m)(3)(i), concerning the requirement that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply; 29 CFR 1910.1018(m)(5), concerning removal of inorganic arsenic from protective clothing by vacuuming; 29 CFR 1910.1018(n)(3)(ii), concerning the requirement for a semi-annual chest x-ray and sputum cytology examination; and 29 CFR 1910.1025(r)(7)(A), concerning the startup date for compliance plans. All other provisions of both standards are unaffected by the variance order, and GM must continue

to comply with them in conjunction with the order.

OSHA has concluded that the preponderance of the evidence accumulated over the entire course of this proceeding demonstrates that this variance, when viewed as a single, integrated compliance program, will provide affected GM workers with at least equivalent protection to that provided by the respective standards. It is important to note that OSHA's conclusion that the variance granted provides protection equivalent to that provided by the standards is based on the totality of what would be feasible under the standards. No item by item equivalence has been made. After an evaluation of the unique circumstances presented in this case, OSHA has concluded that the "as safe and healthful as" criterion of section 6(d) of the Act been satisifed. In fact this variance in many ways may provide even greater protection than the standards. It immediately initiates a plan for implementation of engineering and work practice controls while that requirement of the lead standard is judicially stayed and not binding on the applicant; it ensures that the most effective type of control (elimination of lead and arsenic exposure) will be used; it provides acceptable interim protection until long term goals are met; and it facilitates OSHA enforcement by establishing a uniform compliance plan for all affected GM assembly facilities.

The following is a discussion of the individual provisions of the variance order and the relevant sections of the lead and inorganic arsenic standards:

1. Methods of Compliance

A variance is granted from paragraphs 1910.1025(e)(1) and (r)(7)(A) and paragraph 1910.1018(g)(1)(i). These paragraphs refer to methods of complying with the standards' permissible exposure limits and to the schedule for submitting a written compliance plan. The lead and inorganic arsenic standards both require compliance with the PEL (50 $\mu g/m^3$ for lead; 10 $\mu g/m^3$ for inorganic arsenic, as 8-hour time-weighted averages) by means of engineering and work practice controls. This requirement in the lead standard has been stayed pending judicial review. The inorganic arsenic standard allowed all employers up to 16 months for compliance with this requirement; the lead standard allowed up to 5–10 years for employers in 5 selected industries and up to one year for employers in all other industries, of which automobile manufacturing is one. Each standard requires employers to establish and implement a written compliance plan to achieve these goals. This requirement in the lead standard has also been stayed. The inorganic arsenic standard gave employers 4 months to prepare a written compliance plan; under the lead standard, employers who were given one year from the standard's effective date for compliance with the PEL were given 6 months to complete the compliance plan. Where engineering and work practice controls are not sufficient to meet permissible limits, both standards require reductions in exposure to the lowest levels achievable with these controls supplemented with personal respiratory protective equipment.

For each standard, OSHA determined that compliance with the PEL by means of engineering and work practice controls by the dates given for compliance was generally feasible for all affected industries. OSHA also recognized that potential compliance problems could arise in specific operations. Processes or jobs within a given industry. It was proposed that these situations be remedied in the enforcement context through negotiated abatement plans or variances. [See 43 FR 19601 (inorganic arsenic) and 43 FR 52991 (lead).]

The solder grinding operation consistently generates extremely high concentrations of airborne lead and arsenic particulates and, consequently, controlling the workers' exposure to within permissible limits is very difficult with conventional types of engineering and work practice controls. GM has thus committed itself to the objective of eliminating employee exposure to lead and inorganic arsenic due to solder grind operations by January 1, 1986, barring unforeseen economic or technical limitations. The company has proposed to accomplish this by redesigning the automobile body so that it does not require solder joints. This approach would take longer than the standards would allow for compliance. It involves substantial redesigning and retooling, and since automobile production is planned several years in advance, new model changes can only be reasonably accomplished with several years lead time. GM is anticipating that all of its models will have undergone a major model change which incorporates the redesigned body by the 1986 model year.

GM's commitment to eliminate exposure to lead and inorganic arsenic does not, however, preclude the Company from using alternative means of reaching the same goal if the Company finds them to be more cost-effective, efficient, or otherwise preferable. Alternative solutions which may be used under the variance Order include using suitable substitutes for lead solder or automating the solder grinding operation.

It is a fundamental principle of industrial hygiene that there is no better way of protecting employees from exposure to lead and arsenic than by elimination of employee exposure to those substances. To aid GM in its lead and arsenic exposure elimination program, OSHA has issued this variance and thereby extended the time for the Company to comply with the standards' PEL's solely by use of engineering and work practice controls. In the itnerim, the variance order obligates the Company to provide additional protection to that currently provided by the standards. GM has a continuing responsibility to reduce employee exposure to lead and arsenic by utilizing feasible engineering and work practice controls that may be developed in the future, despite the current stay of this provision of the lead standard (Order paragraph 9). Whenever permissible exposure levels are not met by engineering controls or work practice controls, the Company must provide to each solder grind booth worker, without regard to airborne exposure levels, a positive pressure, supplied-air respirator, with a hood and protective bib. Clean hoods and bibs must be provided on a daily basis [Order paragraph 1).

In addition to the written compliance plans required by the standard, GM is also required to submit a detailed annual report to OSHA on the implementation of its lead elimination program (Order paragraph 2). Since trade secret information may be included in these reports, the Department of Labor will protect the confidentiality of this information, if a privilege is asserted by GM, to the fullest extent permitted by law and will notify GM in advance if disclosure is compulsory to allow GM an opportunity to protect its interests.

Both the compliance plan and the annual report will reflect a Corporation-wide compliance program applicable to all of GM's affected facilities. This is in lieu of separate plans for each workplace which would otherwise be required under the standards. This approach will enable OSHA to monitor GM's total compliance efforts and will facilitate uniform and systematic enforcement of essentially similar operations in diverse locations. It is OSHA's decision that this approach, in conjunction with the augmented exposure monitoring, medical

surveillance, medical removal protection, and training programs provided in the variance order, will provide solder grind booth workers with at least equivalent protection as would be afforded by the lead and inorganic arsenic standards.

2. Exposure Monitoring

The primary purpose of air monitoring is to identify the sources and the extent of employee exposure to airborne lead and inorganic arsenic. In general, monitoring assists the employer in the selection of proper engineering controls and the assessment of effectiveness of those controls. Where engineering controls do not reduce exposure levels to or below the PEL, monitoring enables the employer to determine the appropriate respiratory protection to be used in conjunction with engineering controls. Additionally, monitoring enables the employer to notify employees when their exposure levels exceed permissible limits, as required by section 8(c)(3) of the Act, and provides information to physicians when, for example, air lead readings are low but blood leads are high.

Employee exposure, as defined by both the lead and inorganic arsenic standards, at 29 CFR 1910.1025(d)(1)(i) abd 29 CFR 1910.1018(e)(1)(ii) respectively, is exposure which would occur in the absence of respiratory protection. It is acknowledged that engineering controls currently available to GM are not sufficient by themselves to reduce employee exposure levels to the PEL within the time periods allowed by the lead and inorganic arsenic standards. Therefore, this variance is predicated on the interim use of supplied-air respirators by all solder grind booth employees while GM works toward eliminating exposure to lead and inorganic arsenic originating from solder grinding. Since data from GM as well as from OSHA variance inspections have demonstrated that airborne concentrations of lead and inorganic arsenic, although they vary considerably, are within the limits which permit the use of the supplied-air respirators currently in use by GM (not in excess of either 100,000 ug lead/m^3 of air, or 20,000 ug inorganic arsenic/m^3 of air), monitoring inside the hood of the respirator will present, for the purposes of this variance, a means of determining employee exposure to airborne lead and inorganic arsenic and efficacy of the respirator program. The objectives of airborne monitoring will be met in this way, and thus a variance is granted from 29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii) to permit sampling to be carried out under the hood of the respirator (Order paragraph 8).

The exposure monitoring requirements of the standards state that full-shift personal samples (i.e., at least 7 continuous hours), including at least one job classification in each job area, be taken. See 29 CFR 1910.1018(e)(1)(iii) and 29 CFR 1910.1025(d)(1)(ii). GM has proposed that short-term monitoring inside the hood of the supplied-air respirator for a period of at least two hours be carried out for each solder grind booth employee, claiming that short-term sampling is sufficiently representative in this situation. The results of a GM conducted study presented to OSHA comparing the concentrations of airborne lead from short-term (2 hour minimum) samples with full-shift (7 hour) samples, indicated a significant relationship between the concentrations in the samples. This conclusion was based on high correlation coefficient values, the similarity of average concentrations and the similarity of the variations derived from the sample data. Short-term monitoring, therefore, appears to provide reliable measurements for solder grind booth employees where ceiling exposure levels inside the hood are consistently below the standards' PEL's.

This evidence is not conclusive, but is sufficient for OSHA to allow GM to perform short-term monitoring for a period of 60 days, commencing with the date of this Order, while resampling to confirm the reliability of the first results is done. OSHA and GM are cooperatively exchanging information in an effort to resolve this question. While the formal evaluation period has not started, an additional data set has been gathered which supports the original findings. Data obtained during the trial evaluation period will be analyzed by OSHA and if the results continue to justify short-term monitoring, it will be acceptable for monitoring of solder grind booth employees on a permanent basis. If the data do not justify short-term monitoring, then the standards will apply. Until the study is completed, full-shift monitoring for lead and inorganic arsenic is required for at least one employee, at each work station in the solder grind booth on alternating shifts, in at least 5 plants, for two test cycles within 60 days of the grant of this variance. This will serve to provide comparative data and will safeguard employees from possible overexposure pending the outcome of the short-term monitoring study.

Paragraph (d)(4)(i) of the lead standard requires an employer to monitor only a representative sample of workers to determine all workers' exposure levels. With regard to frequency of monitoring, paragraph (d)(6)(i) of the lead standard states that where an initial reading reveals exposure below the action level, measurements need not be repeated unless a change in circumstances occurs, as outlined in paragraph (d)(7). Where monitoring reveals employee exposure at or above the action level but below the PEL, paragraph (d)(6)(ii) of the lead standard calls for monitoring at least once every six months, until readings fall below the action level. Quarterly monitoring is required under paragraph (d)(6)(iii) of the lead standard only when exposure levels are determined to be above ther PEL, until such time as readings are confirmed to be below the action level. An identical requirement is found in paragraph (e)(3) of the inorganic arsenic standard.

Under paragraph 8 of the Order, GM will be required to go beyond what the standards require in two respects. First, each solder grind booth worker, rather than a representative group, will be sampled. Second, sampling will be carried out quarterly for each solder grind booth employee, without regard to previous results that may have been below the action level. Monitoring of individual employee exposure levels on a quarterly basis provides greater protection than the less frequent, representative monitoring requirements imposed by the standards.

OSHA believes that a program of short-term monitoring inside the hood of the supplied-air respirator for all solder grind booth employees, on a quarterly basis, supplemented by the representative full-shift sampling as outlined in paragraph 8 of the Order, provides worker protection at least as safe and healthful as would exist if the exposure monitoring provisions of the lead and inorganic arsenic standards were followed.

As an added safeguard, a comprehensive evaluation, as detailed in paragraph 8 of the Order, is required whenever the airborne lead level, measured inside the hood of the supplied-air respirator, exceeds the PEL, as a time-weighted average, of 50 ug/m^3. After the evaluation, air monitoring will be repeated within 10 days, for a sufficient length of time (2 hours or longer) to provide statistically representative information. A two hour sample will also be collected outside the hood. All measures necessary under paragraph 8 of the Order will be taken to reduce exposure to acceptable levels. This comprehensive investigation

requirement, coupled with the quarterly monitoring of each solder grind employee, further assures that no employee will knowingly be overexposed to lead and inorganic arsenic.

3. Medical Surveillance and Medical Removal Protection

Under the variance, medical protection will be enhanced for solder grind booth workers exposed to lead and inorganic arsenic. GM will augment in several ways its medical surveillance and medical removal protection ("MRP") programs currently carried out under the lead standard. GM will also continue its medical surveillance program under the inorganic arsenic standard, but a variance has been granted from paragraph (n)(3)(ii) only as it applies to the frequency of chest x-ray and sputum cytology examinations.

Paragraph 3 of the Order requires GM to maintain its MRP program in accordance with paragraph (k) of the lead standard notwithstanding any judicial stay of enforcement that may be ordered. A motion for a stay is currently pending before the U.S. Court of Appeals and if a stay is not ordered by this court, subsequent appeals may be taken to the Supreme Court where a stay of enforcement could be imposed.

The lead standard provides for blood lead monitoring on a frequency of 2 or 6 months, depending upon exposure levels. Under paragraph 4 of the Order, GM will provide all solder grind booth employees with blood lead monitoring at least every two months, without regard to exposure levels. In this way, the Order expands coverage of the standard allowing closer surveillance of these workers which in turn will help evaluate the efficacy of GM's comprehensive health and hygiene program. If, at any time, an employee's blood lead level increases to within 10 μg/100g of the medical removal levels specified in 29 CFR 1910.1025(k)(1)(i), that employee must be resampled within 10 days and a comprehensive investigation of possible causes made for appropriate corrective action.

Inorganic arsenic is a known human carcinogen which causes lung and other cancers. The inorganic arsenic standard specifies that all employees exposed at least 30 days per year over the action level, or with a history of 10 or more years of exposure over the action level must be provided with initial chest X-ray and sputum cytology examinations, as part of the medical surveillance program. 29 CFR 1910.1018 (n)(3)(i) provides that all employees under 45 years of age with fewer than 10 years of exposure over the action level, without regard to respirators, shall have annual medical examinations thereafter that include chest X-ray, but not sputum cytology, examinations. 29 CFR 1910.1018(n)(3)(ii) specifies that all other employees in the medical surveillance program, i.e., those not included in (n)(3)(i), shall be given examinations that include both chest X-ray and sputum cytology examinations at least semi-annually. The standard will apply as promulgated to the class of solder grind booth employees covered by 29 CFR 1910.1018(n)(3)(i), but a variance has been granted with respect to the semi-annual administration of chest X-ray and sputum cytology examinations for the group included under 29 CFR 1910.1018(n)(3)(ii).

In its application for a variance from the inorganic arsenic standard, GM requested a variance from the semi-annual chest X-ray requirements. The company expressed the opinion that the danger from exposure to radiation outweights its diagnostic benefit. During the course of the joint OSHA–GM–UAW discussions, GM's medical advisors added that it was their opinion that sputum cytology examinations yielded an unacceptable number of false positve results and the risk factor involved in the subsequent bronchoscopy examinations or other procedures which GM felt were indicted when positive sputum cytology results were obtained also outweighed the benefit of sputum cytology. A reduction in the frequency of chest X-ray and elimination of sputum cytology examinations was proposed by GM.

OSHA has concluded that in this particular case the frequency of chest X-ray and sputum cytology examinations can be reduced without compromising the level of protection. Under paragraph 10 of the Order, employees whose exposure levels measured inside the hood of the supplied-air respirator do not exceed the action level will be provided with chest X-ray and sputum cytology examinations on an annual basis. Variance is granted only from the frequency and the basis of determining frequency (i.e., exposure measurements inside the hood) for administration of chest X-ray and sputum cytology examinations. GM will continue to provide semi-annual physical examinations, incorporating the procedures listed in (n)(2)9ii) (B) and (D) of the inorganic arsenic standard. In the event that monitoring inside the hood of the supplied-air respirator reveals exposure in excess of the action level, the semi-annual physical examinations will be required to include both chest X-ray and sputum cytology examinations, until such time as the exposure level falls below the action level.

This approach is justified by the fact that where supplied-air respirators with hoods are continuously worn, measurements inside the hood will give a more accurate approximation of the employee's breathing zone exposure levels than measurements of ambient levels in the booth which, in all cases, would trigger semi-annual chest X-ray and sputum cytology examinations. It appears medically prudent to administer chest X-ray and sputum cytology examinations on a semi-annual basis only when exposure exceeds the action level, and in all other cases on an annual basis.

With regard to the claim of risk in the administration of the additional tests, including a bronchoscopy examination, which the Company believes may be indicated by a positive sputum cytology test, OSHA has determined that a reduction in frequency of sputum cytology examinations to once a years is warranted only where exposure levels inside the hood remain below the action level. Even though this question engendered much discussion and exchange of information, OSHA does not have adequate evidence before it to conclude that sputum cytology examinations should be discontinued.

At the conclusion of the discussions concerning the issue of chest X-ray and sputum cytology examinations, GM reaffirmed its original positions concerning the minimal beneficial use obtained from providing chest X-ray and sputum cytology examinations to solder grind booth employees. GM did agree to accept the requirements for chest X-ray and sputum cytology examinations as currently required by the variance. GM has indicated, however, that it intends to submit additional data and information in the near future to substantiate its position concerning the use of X-ray and sputum cytology examinations as cancer screening tools, and that it may request modification of this provision of the order based on the new evidence, in accordance with section 6(d) of the Act. OSHA will carefully evaluate and analyze the results of the GM submission when it is received and will consider any applications to modify the requirement for chest X-ray and sputum cytology examinations provided for in the variance.

4. *Solder Dust Removal and Control.*

A variance has been granted from the following provisions in the inorganic arsenic and lead standards which attempt to minimize dispersion of dust when contaminated clothing or equipment is cleaned: (1) 29 CFR

1910.1018(j)(2)(viii), which prohibits removal of arsenic dust by blowing or shaking; (2) 29 CFR 1910.1018(m)(5), which requires vacuuming of protective clothing before entering change rooms, lunchrooms or shower rooms; and (3) 29 CFR 1910.1025(g)(2)(viii), which prohibits removal of lead dust from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air.

Instead of complying with these requirements, solder grind booth employees will be permitted to remove surface dust from their protective equipment and clothing, prior to exiting the booth, either by vacuuming or by the use of fixed-in-place overhead, multi-orificed, compressed air showers (Order paragraph 6). While the latter method is not acceptable under the standards, it meets the objectives of the standards in these circumstances because the employee, while using the air shower, is required to wear a supplied-air respirator connected to the air supply which will prevent dust from entering his breathing zone; any other employees in the solder grind booth would be unaffected since they also would be wearing their respirators; and employees outside of the solder grind booth would be unaffected because the lead and arsenic dust which would be removed by the air shower would remain within the confines of the booth (Order paragraph 5).

The air showers permitted by the variance Order have been in use in various locations in the auto industry. OSHA has observed these air showers in several solder grind booths and is convinced that their use satisfies the standards' objective of minimizing dispersion of dust into the air when clothing and protective equipment are being cleaned.

5. *Eating Facilities.*

A variance has been granted from 29 CFR 1910.1025(i)(4)(ii) and 29 CFR 1910.1018(m)(3)(i), which require that readily accessible lunchroom facilities be provided and have a temperature controlled, positive pressure, filtered air supply. Variance investigations have shown that GM currently provides such facilities, and OSHA has determined that they are in substantial compliance with these requirements of the standards.

Paragraph 11 of the Order permits the Company to provide clean eating areas near the solder grind booths. These areas need not have a temperature-controlled, positive-pressure filtered air supply, but must be maintained as free as-practicable of lead or arsenic dust and must be at least 50 feet from any point of the solder grind booth. Unlike smelters, for example, where lead contamination is pervasive and filtered-air lunchrooms provide protection for workers eating lunch, the ambient air in an automobile manufacturing plant is relatively free from lead and arsenic. The solder grind booth is the primary source of lead and arsenic dust, and since the dust will be contained within the booth by the booth's ventilation system and by the carrying out of the requirement of the Order that car bodies and employees' protective clothing and equipment be cleaned before they exit the booth, contamination of food and eating areas by airborne lead and arsenic is not considered to be a problem. Air samples taken by GM and by OSHA near exits and entrances of the solder grind booth and in the eating areas support this conclusion. OSHA has determined that these conditions will provide solder grind booth workers with at least equivalent protection as lunchrooms required by the standard.

6. *Training.*

Under paragraph 12 of the Order, GM will supplement the training and education requirements of the lead and inorganic arsenic standards with periodic presentations of a written program for all employees in the soldering operation from application to finishing. The program will be given to all workers prior to initial assignment to the soldering operation and will provide information on the nature of the hazard, the controls used for reducing exposure, proper use of supplied-air respirators with hoods and bibs, procedures for cleaning clothes and equipment, personal hygiene and other relevant information.

7. *Non Solder Grind Booth Employees.*

The variance Order also gives increased protection from lead and arsenic dust to workers on the assembly line adjacent to the solder grind booth, and to supervisors who enter the booth for short periods. All provisions of the lead and inorganic arsenic standards apply to these workers, and in addition the Company will (1) maintain the solder grind booths in such a manner that airborne lead or arsenic dust generated within the booth is not released outside the confines of booth; (2) remove any solder dust from the automobile bodies before additional work is performed; (3) provide blood lead monitoring at least every six months without regard to employee's airborne lead and arsenic exposure levels; and (4) implement the MRP provisions of the lead standard even if they are stayed by court order pending judicial review.

Paragraph 5 of the Order requires the Company to perform whatever repair or maintenance is necessary to maintain the structural integrity of the booth and assure the efficiency of its exhaust ventilation system. Paragraph 7 of the Order also minimizes release of dust outside the booth by requiring that dust be removed from automobile bodies before they exit the booth. As an alternative, dust may be removed by washing the bodies outside of the booth, but in no case may the body proceed for further work until it is cleaned. Workers exposed to lead who do not work in the solder grind booth will be given additional protection through periodic blood monitoring. The lead standard would permit termination of blood monitoring if air monitoring showed values below 30 $\mu g/m^3$; GM has agreed to monitor all workers exposed to lead at least at 6 month intervals regardless of airborne exposure levels (Order paragraph 4). The MRP program will be provided despite any stay of enforcement pending review (Order paragraph 3) (See section on Medical Surveillance and Medical Removal Protection above).

GM had originally requested variances from several other provisions of the inorganic arsenic and lead standards which would have directly affected non solder grind booth employees. These requests and the reasons for their withdrawal, are as follows:

A request had been made for a variance from 29 CFR 1910.1018(e)(1)(iii) and 29 CFR 1910.1025 (d)(1)(ii), those provisions of the exposure monitoring section in the inorganic arsenic and lead standards that required collection of full-shift (at least 7 continuous hours) personal samples, as they pertained to employees on the assembly line outside of the solder grind booth. GM's contention was that it was appropriate to collect short-term representative samples. However, when additional data appeared to contradict the assertion, the Company voluntarily withdrew this request for assembly line employees and requested instead that it be applied to solder grind booth employees only. Paragraph 8 of the Order, discussed elsewhere, deals with this aspect.

A request was made for a variance from 29 CFR 1910.1025(i) of the lead standard as it relates to requirements for the provision and use of change rooms, showers, lunchrooms, and lavatories in areas where employees are exposed to lead above the PEL without regard to the use of respirators, GM requested a variance for solder applicators and employees on the line between the solder grind booth and the

Bonderite operations, insofar as the provision required special hygiene facilities other than lavatories. OSHA's position was that overexposure to lead and inorganic arsenic for employees other than those working in the solder grind booth could readily be prevented by engineering and work practice controls and that, therefore, the standard would not require the employer to provide these hygiene facilities. GM concurred and withdrew its request for variance.

GM had originally requested a variance from the respirator selection tables of the lead and arsenic standards as they applied to supervisory personnel who enter the solder grind booth periodically for varying periods of time. GM's concern was that the standards could be interpreted to require supervisors to wear the supplied-air respirator with a hood and bib regardless of the duration of exposure. In discussions with GM, OSHA explained that the standards required supervisors to be provided with the respirator which affords the necessary protection factor according to the respirator selection tables. This interpretation satisfied GM's concerns, and the Company agreed to have the respective standards apply to the determination of the appropriate respirators for supervisors.

In most situations, however, supervisors would have to wear the same protective equipment worn by the solder grind booth employees. For example, because of the considerable variation in the concentrations of airborne lead and inorganic arsenic in the solder grind booths, they must be assumed to be 100,000 ug/^{3} and 20,000 ug/^{3} of air, respectively. Further, although the number of entries and the likely duration of each exposure for a supervisor is quite unpredictable in advance, if we assume a total exposure of 15 minutes for an 8-hour day, his time-weighted average exposure to lead would be 3125 ug/^{3}, or greater than 60 times the PEL for lead. This would necessitate the wearing of either a powered, air-purifying respirator with high efficiency filters, or a half-mask supplied-air respirator operated in the positive pressure mode. However, unless all operations cease while he is in the booth, he must also protect his eyes, face and upper body from the hot, high velocity solder particles.

Therefore, although the choice of the appropriate respirator takes into consideration the duration of exposure it would appear that, in actual practice, supervisors who enter the solder grind booth during grinding operations for any substantial period of time would need to wear respiratory protection equivalent to that of the solder grind booth employees.

IV. Order

Pursuant to authority in section 6(d) of the Occupational Safety and Health Act of 1970, and in Secretary of Labor's Order No. 8–76 (41 FR 29059), it is ordered that the General Motors Corporation be, and is hereby, authorized to comply with the requirements of this Order set out below in lieu of complying with the requirements prescribed in the following provisions of the standard for Occupational Exposure to Lead, 29 CFR 1910.1025, and of the standard for Occupational Exposure to Inorganic Arsenic, 29 CFR 1910.1018; 29 CFR 1910.1025(d)(1)(i) and 29 CFR 1910.1018(e)(1)(ii), concerning employee exposure for monitoring purposes; 29 CFR 1910.1025(d)(1)(ii) and 29 CFR 1910.1018(e)(1)(iii), concernng full-shift monitoring; 29 CFR 1910.1025(e)(1) and 29 CFR 1910.1018(g)(1) (i) and (ii), concerning engineering and work practice controls as they pertain to methods of compliance; 29 CFR 1910.1025(g)(2)(viii) and 29 CFR 1910.1018(j)(2)(viii), concerning the prohibition for lead removal from protective clothing or equipment by blowing, shaking or any means which disperses lead into the air and for removal of inorganic arsenic by blowing or shaking; 29 CFR 1910.1025(i)(4)(ii) and 29 CFR 1910.1018(m)(3)(i), concerning the requirement that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply; 29 CFR 1910.1018(m)(5), concerning removal of inorganic arsenic from protective clothing by vacuuming; 29 CFR 1910.1018(n)(3)(ii), concerning the requirement for a semi-annual chest X-ray and sputum cytology examinaton; and 29 CFR 1910.1025(r)(7), concerning the startup date for compliance plans. All other provisions of both standards are unaffected by this variance order, and the General Motors Corporation must continue to comply with them in conjunction with the terms of this Order.

1. Each employee in the solder grind booth shall be provided daily with, and required to wear, supplied-air respirators with hoods and protective bibs, operated in the positive pressure mode. These respirators shall be approved for use in atmospheres containing not more than 20 milligrams of inorganic arsenic per cubic meter of air (20 mg/m^3), or 100 milligrams of lead per cubic meter of air (100 mg/m^3).

2. A corporate written compliance program, as required by paragraph (e)(3) of the standard for Occupational Exposure to Lead, shall be completed within one year of the effective date of the grant of variance. Copies of the plan will be available at each plant covered by this variance. The employer shall substantially reduce, with the goal of ultimate elimination, employee exposure to lead and inorganic arsenic in connection with solder grind operations as soon as feasible, but not later than January 1, 1986, barring economic or technical limitations. In addition to the compliance plan, the employer shall submit to the Assistant Secretary a report concerning the detailed implementation of this objective on January 1, 1981, and annually thereafter until the goal is met. Upon the assertion by the employer, at the time of each submission, that the report contains trade secret information, the Department of Labor will protect the document to the fullest extent permitted by law and will not disclose it unless such disclosure is compulsory as a matter of law. Where disclosure may be required, the employer will be notified in advance.

3. For all employees in General Motors' medical surveillance program, the employer shall institute a program of medical removal protection as provided in paragraph (k) of the standard for Occupational Exposure to Lead. This shall apply without regard to any judicial stay which may be placed on this section of the standard pending final disposition by a court.

4. All solder grind booth employees shall have blood lead levels determined at least every two months, without regard to air monitoring. All other employees in the medical surveillance program shall have blood lead levels determined in accordance with paragraph (j) of the standard for Occupational Exposure to Lead, but not less frequently than every 6 months, irrespective of airborne lead monitoring results.

5. The employer shall be required to maintain the solder grind booth in such condition that airborne lead or inorganic arsenic dust within the booth shall be contained within the confines of the booth.

6. The employer shall assure that employees, prior to exiting the solder grind booth, remove surface dust from their clothing and equipment by vacuuming, or by the use of fixed-in-place overhead air showers with multiple orifices, while their respirators are connected to an air supply.

7. The employer shall assure that solder dust is removed from the automobile bodies before they exit the confines of the solder grind booth, as

required by paragraph (h)(1) of the standard for Occupational Exposure to Lead, except that where car wash facilities are provided, the automobile bodies may be washed to remove solder dust after they exit the solder grind booth. In any case, the solder dust shall be removed before any additional work is performed on the automobile bodies.

8. The employer is required to monitor solder grind booth employees for periods of time sufficient to collect samples representative of exposure (two hours or longer). Sampling under the hood of the supplied-air respirator shall be carried out quarterly for each solder grind booth employee even though previous results may have been below the action level, except that full-shift sampling for airborne levels of lead and inorganic arsenic shall be conducted for at least one employee at each work station in the solder grind booth on alternating shifts in at least five plants for two test cycles within 60 days of the grant of this variance. At the end of the 60 day period, if the results justify short-term sampling, then where the employer is required to monitor solder grind employees, routine short-term monitoring shall be deemed acceptable except where otherwise indicated.

Where: (a) the time weighted average (TWA) of the airborne lead level inside the hood of the supplied-air respirator exceeds 50 micrograms per cubic meter of air (50 ug/m^3); or (b) the employee's blood lead level is within 10 ug/100g of the removal level, a comprehensive evaluation will be made by the employer.

Such an evaluation may include study of engineering controls and personal protective equipment (air-supply, hood integrity, booth ventilation and facilities), employee personal hygiene and work practices, and blood lead data. Engineering changes, further testing, and employee retraining will be carried out as needed. But, where condition (a) above occurs, air monitoring shall be repeated within 10 days; or where (b) above occurs the blood lead level shall be resampled within 10 days of receipt of the laboratory results.

Where additional testing is indicated inside the hood of an supplied-air respirator, the sample will be collected for a sufficient length of time (two hours or longer) to provide statistically representative information. A two hour sample will also be collected outside the hood. Sampling will be done using one or more filters as warranted.

The employer will conduct full-shift air sampling on the automotive assembly line from solder application to Bonderite (except for the solder grind booth) in compliance with the requirements of the standard for Occupational Exposure to Lead.

9. The employer is not relieved from the continuing responsibility to utilize feasible engineering and work practice controls that may be developed as the sole means of reducing exposure to inorganic arsenic and lead to acceptable levels under the standard for Occupational Exposure to Inorganic Arsenic and the standard for Occupational Exposure to Lead.

10. In determining whether solder grind booth employees exposed to inorganic arsenic must be provided chest x-ray and sputum cytology examinations at semi-annual intervals as required by paragraph 1910.1018(n)(3)(ii) of the standard for Occupational Exposure to Inorganic Arsenic, the arsenic level in air may be measured inside the hood of the supplied-air respirator except that, without regard to the standard, these chest x-rays and sputum cytology examinations shall be provided to all such solder grind booth employees annually.

11. The employer shall provide a clean and readily accessible eating facility for solder grind booth employees. These facilities shall be no closer than fifty (50) feet from any point of the solder grind booth and shall be kept clean in accordance with the housekeeping requirements as provided in paragraph (h) of the standard for Occupational Exposure to Lead.

12. The employer shall provide a written training and education program for employees assigned to solder application, grinding, and finishing operations which shall include, but not be limited to, the health hazards associated with inorganic arsenic and lead, proper respirator use, protective clothing, personal hygiene, and restrictions on smoking or eating in the solder grind booth. This training and education program shall be operated periodically.

13. The employer shall comply with all provisions in this grant of variance, and in addition shall not be relieved from compliance with all other applicable provisions of the standard for Occupational Exposure to Inorganic Arsenic and the standard for Occupational Exposure to Lead.

As soon as possible, the General Motors Corporation shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective Date: This Order shall become effective on July 11, 1980, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 17th day of June 1980.

Eula Bingham,

Assistant Secretary of Labor.

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Office of the Secretary

Affirmative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of certifications of eligibility to apply for worker adjustment assistance issued during the period June 30–July 3, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

In the following cases it has been concluded that all of the criteria have been met.

TA–W–7811; Apex Glove Co., Milwaukee, Wis.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Apex Glove Company, Milwaukee, Wisconsin. The workers produce work gloves.

U.S. imports of Work Gloves and Mittens increased absolutely in each year from 1975 through 1979 and increased relative to domestic production in each year from 1977 through 1979. Imports increased absolutely in January–March 1980 compared to the same period in 1979.

A Department survey revealed a customer which represented a major portion of sales by Apex Glove Company decreased purchases from the subject firm and increased purchases of imported work gloves in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that:

"All workers of Apex Glove Company, Milwaukee, Wisconsin who became totally or partially separated from employment on or after April 15, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of June 30–July 3, 1980.

Signed at Washington, D.C., this 7th day of July, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-20756 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8756]

Arrow Metal Products Corp., Detroit, Mich.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1980 in response to a worker petition received on May 19, 1980 which was filed on behalf of workers and former workers producing automotive stampings at Arrow Metal Products Corporation, 1200 Mount Elliott, Detroit, Michigan.

On May 6, 1980 a petition was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) on behalf of the same group of workers (TA-W-8277).

Since the identical group of workers is the subject of the ongoing investigation TA-W-8756, a new investigation would serve no purpose. Consequently, this investigation for TA-W-8756 has been termination.

Signed at Washington, D.C., this 2nd day of July 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 80-20750 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period June 30–June 3, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-7158; TA-W-7426; Chicago Pneumatic Tool Co., Solon, Ohio, Franklin, Penn.

Investigation revealed that criterion (3) has not been met. Neither company imports nor increased imports by customers contributed importantly to separations from the subject firm.

TA-W-7850; Clear Shake, Inc., Clear Lake, Wash.

Investigation revealed that criterion (3) has not been met. Declines in employment in 1980 were due to declines in new housing starts and were not a result of increased imports.

TA-W-7781; Cheney Brothers, Inc., Manchester, Conn.

Investigation revealed that criterion (3) has not been met. Sales and employment at the subject firm have increased since the expiration of a prior certification in April 1980.

TA-W-7716; Sharon Tube Co., Sharon, Penn.

Investigation revealed that criterion (3) has not been met. With respect to workers producing welded pipe, sales or production did not decline. With respect to workers producing seamless pipe such workers are covered by an existing certification.

TA-W-7681, TA-W-7682; Michigan Rivet Corp., Plant I and Plant II, Warren, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7710; R. Hoe Co., Inc., Birmingham, Ala.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7680; Robert Gray Shake and Shingle, Inc., Hoquiam, Wash.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7636; Inter-City Trucking Service, Inc., Flint, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7647; S & S Cartage, Flint, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7653; Freight Consolidation Services, Inc., Detroit, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7657; Lewis and Clark Chrysler Plymouth, Inc., St. Louis, Mo.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7658; Lou Fusz Pontiac, St. Louis, Mo.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8708; Amoco Chemical Corp., Decatur, Ala.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of purified teraphalic acid are negligible.

Affirmative Determinations

In each of the following cases, it has been concluded that all of the criteria have been met, and certifications have been issued covering workers totally or partially separated from employment on or after the designated dates.

TA-W-7452; Firestone Tire & Rubber Co., Des Moines, Iowa

With respect to workers not producing earthmover tires, criterion (3) has not been met. A survey of customers revealed that increased imports did not contribute importantly to the separation of such workers at the plant.

With respect to workers producing earthmover tires, a certification was issued covering all such workers separated on or after November 3, 1979.

TA-W-8134; William Amer Co., Philadelphia, Pa.

A certification was issued covering the workers indicated below, who will be separated on or after July 1, 1980: David F. Bailie, Laird H. Simons, Jr.; Barbara L. Simons, and William M. Springer.

TA-W-7884; The Glover Corp., Calico Rock, Ark.

A certification was issued covering all workers of the firm separated on or after April 18, 1979.

TA-W-8086; Maple Tree, Inc., Maplesville, Ala.

A certification was issued covering all workers of the firm separated on or after June 1, 1979.

TA-W-7976 and 7981; International Telephone & Telegraph Corp., the Automotive Electrical Products Division, Selmer, Tenn., and Bellaire, Mich.

A certification was issued covering all workers of the plants separated on or after April 11, 1979 and before December 1, 1979.

TA-W-7731, 7974, 7975, 7977, 7978, 7979, 7980 and 7982; International Telephone & Telegraph Corp., Automotive Electrical Products Division, Oak Park, Mich.; Brownsville, Tex.; Fayette, Miss.; Cairo, Ga.; Bainbridge, Ga.; Petoskey, Mich. (Plant No. 6); Petoskey, Mich. (Plant No. 1); and East Jordan, Mich.

A certification was issued covering all workers of the plants separated on or after April 11, 1979.

I hereby certify that the aforementioned determinations were issued during the period June 30–July 3, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, during normal working hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-20759 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6846]

International Silver Corp., Los Angeles, Calif.; Affirmative Determination Regarding Application for Reconsideration

On May 19, 1980, the petitioner requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of International Silver Corporation's warehouse in Los Angeles, California. This determination was published in the Federal Register on May 23, 1980 (45 FR 35045).

Petitioner claims that the Los Angeles, California warehouse was closed as a result of the decline in production at International Silver's Factory C, in Meriden, Connecticut, whose workers employed on stainless steel flatware were certified for trade adjustment assistance on December 13, 1978, TA-W-4071. Petitioner further claims that warehousemen for International Silver's warehouse in Wallingford, Connecticut are receiving trade adjustment assistance.

Conclusion

After review of the application, I conclude that petitioner's claim of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 3rd day of July 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-20753 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 21, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 21, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 7th day of July, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Dart Truck Co. (UAW)	Kansas City, MO	5/2/80	4/24/80	TA-W-9,160	Manufactures trucks.
Eagle Picher Corp. (workers)	Grabill, IN	6/25/80	6/18/80	TA-W-9,161	Fiberglass reinforced polyester plastic parts.
J.R. Fashions Inc. (ILGWU)	Paterson, NJ	6/23/80	6/19/80	TA-W-9,162	Produce ladies' coats.
NuCar Prep System Inc. (Teamsters)	Santa Fe Springs, CA	6/23/80	6/20/80	TA-W-9,163	Preparation of new cars for delivery to dealers.
Rockford Headed Products Inc. (workers)	Rockford, IL	6/23/80	6/20/80	TA-W-9,164	Cold headed fasteners.
Standard Automotive Parts & Co. (workers)	Muskegon, MI	6/23/80	6/20/80	TA-W-9,165	Parts for American made cars and trucks.
Sterling Diamond Tool Inc. (workers)	Warren, MI	6/23/80	6/17/80	TA-W-9,166	Diamond tools and drill bits.
White Automotive Service Inc. (workers)	Allen Park, MI	6/23/80	6/16/80	TA-W-9,167	Add accessories to autos.
Washington Steel Corp. (workers)	Washington, PA	6/11/80	5/30/80	TA-W-9,168	Produce flat roll stainless sheets and strips.
Arrow Company (ACTWU)	Bremen, GA	6/23/80	6/18/80	TA-W-9,169	Shirts.
C & P Coat Co (workers)	Hammonton, NJ	6/13/80	6/5/80	TA-W-9,170	Children's coats, ladies' coats.
Marlex Mfg. Co. (workers)	Caro, MI	6/12/80	6/2/80	TA-W-9,171	Tread nuts for steering columns.
Arrow Company (ACTWU)	Carbon Hill, GA	6/23/80	6/18/80	TA-W-9,172	Shirts.
Arrow Shirt Co. (ACTWU)	Albertville, AL	6/23/80	6/18/80	TA-W-9,173	Shirts.
Arrow Shirt Co. (ACTWU)	Jasper, AL	6/23/80	6/18/80	TA-W-9,174	Shirts.
Arrow Shirt Co. (ACTWU)	Atlanta, GA	6/23/80	6/18/80	TA-W-9,175	Shirts.
Oak Industries (workers)	Hayward, CA	6/23/80	6/19/80	TA-W-9,176	Produce materials for electronics industry.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Prairie Manufacturing Co. (ACTWU)	East Prairie, MI	6/23/80	6/18/80	TA-W-9,177	Dress slacks, postal uniforms and industrial uniforms.
Bonita Leather Fashions, Inc. (workers)	New York, NY	6/23/80	6/16/80	TA-W-9,178	Leather coats and jackets.
Blue Water Seafoods, Inc., Div. of the Gorton Group (UF & CWU).	Cleveland, OH	6/23/80	6/18/80	TA-W-9,179	Processing frozen fish and seafood products.
Essex Metals & Plastics Co. (workers)	Coldwater, MI	6/23/80	6/18/80	TA-W-9,180	Power steering and brake lines.
Clark Equipment Company, Industrial Truck Division (AIW).	Battle Creek, MI	6/23/80	6/18/80	TA-W-9,181	Internal combustion lift trucks.
Budd Company, Plastics Products Division (UAW).	Carey, OH	6/23/80	6/9/80	TA-W-9,182	Fiberglass auto parts, also fiberglass business machine and electrical components.
Eaton Corp., Eaton Industrial Truck Div. (workers).	Philadelphia, PA	6/23/80	6/20/80	TA-W-9,183	Gas propane and electric fork lift truck's machine parts.
Sheller Globe Corp., Detroit Research Center (workers).	Detroit, MI	6/23/80	6/20/80	TA-W-9,184	Research and development.
Gary Bergman Carpentry Ltd (workers)	Orchard Lake, MI	6/23/80	6/11/80	TA-W-9,185	Construction of new homes.
AC Spark Plug (workers)	Oak Creek, WI	6/23/80	6/18/80	TA-W-9,186	Catalytic converters.
AMF, Inc. (UAW)	Des Moines, IA	6/23/80	6/12/80	TA-W-9,187	Rotary and riding lawn motors, roto-tillers, edgers, snow blowers.
American Hose Corp. (UAW)	Winchester, IN	6/23/80	6/17/80	TA-W-9,188	Fuel line hose for automotive industry.
Clark Engineering Co. (workers)	Haslett, MI	6/23/80	6/10/80	TA-W-9,189	Linkages and connecting members for automotive and truck industries.
Dana Corporation (UAW)	Berick, PA	6/23/80	6/20/80	TA-W-9,190	Leaf springs for truck and trailer industries.
DuPont De Nemours E.I. & Co	Edgemoor, DE	6/23/80	6/19/80	TA-W-9,191	Titanium dioxide.
Firestone Tire & Rubber Co. (URW)	Akron, OH	5/19/80	5/14/80	TA-W-9,192	Truck tires.
Gould Inc. (workers)	Milan, OH	5/19/80	5/7/80	TA-W-9,193	Molded rubber products, shock absorbers silent blocs and cleve blocs.
Ray Bestos Manhattan Friction Materials Co. (workers).	Stratford, CT	6/23/80	6/18/80	TA-W-9,194	Automotive transmissions, brakes and auto parts.
Callins Industries, Inc. (company)	Greenfield, TN	5/6/80	4/30/80	TA-W-9,195	Aluminum electrolytic capacitors.
The Goodyear Tire & Rubber, Co. (UTWA)	Decatur, AL	6/23/80	6/13/80	TA-W-9,196	Fabric mill producing tire cords.
Hayes-Albion Exhaust System (AIW)	West Unity, OH	6/23/80	6/16/80	TA-W-9,197	Product automotive exhaust systems.
Jim Kraut Chev. (IAM)	Butte, MT	5/21/80	5/13/80	TA-W-9,198	Chevrolet vehicles and Chevrolet parts.
May & Scofield, Inc. (workers)	Howell, MI	6/23/80	6/12/80	TA-W-9,199	Produce auto parts.
Molded Fiber Glass Tray Co. (workers)	Linesville, PA	6/23/80	6/18/80	TA-W-9,200	Produce lamps sections for autos.
Newport Tire Center, Inc. (workers)	Springfield, MO	6/23/80	6/21/80	TA-W-9,201	Goodyear tires and auto services.
Petoskey Manufacturing Co. (workers)	Petosky, MI	6/23/80	6/13/80	TA-W-9,202	Manufacturers decorative emblems for auto industry.
Clearview Coat Co. (workers)	New York, NY	4/10/80	3/28/80	TA-W-9,203	Ladies' coats imported ladies' wool sweaters long and short, suede coats long and short.
Dynamic Inst. Corp. (workers)	Latos, PR	6/23/80	6/17/80	TA-W-9,204	Transformers, battery chargers.
Goodyear Tire & Rubber Co. (URW)	Akron, OH	6/16/80	6/11/80	TA-W-9,205	Produce tires.
Gulf & Western Manufact. Co. (Gulf & Western Stamping Division) (UAW).	East Jordan, MI	6/13/80	5/29/80	TA-W-9,206	Window regulators, hood latches, emergency brakes.
Knapp King Size Corp. (workers)	New Bedford, MA	6/23/80	6/18/80	TA-W-9,207	Manufacturing shoes.
Landy Beef Co. Inc. (UFCW)	Boston, MA	6/13/80	6/9/80	TA-W-9,208	Bought and sold beef.
Lewfer Drug Products (workers)	Long Island City, NY	6/13/80	6/11/80	TA-W-9,209	Health and beauty aids.
Puritan Fashions (Forever Young) (workers)	New York, NY	6/13/80	6/10/80	TA-W-9,210	Dresses.
Wohlert Corp.	Lansing, MI	6/13/80	6/5/80	TA-W-9,211	Ring gears for automobiles.
Hercules Welding Products Company (company).	Warren, MI	6/17/80	6/12/80	TA-W-9,212	Copper spot welding tips and electrodes.
ITT Thompson Industries, Div.—Plant #1 (company).	Valdosta, GA	6/17/80	6/12/80	TA-W-9,213	Auto component parts.
ITT Thompson Industries, Div.—Plant #2 (company).	Madison, FL	6/17/80	6/12/80	TA-W-9,214	Auto component parts.
ITT Thompson Industries, Div., Plant #3 (company).	Adel, GA	6/17/80	6/12/80	TA-W-9,215	Auto component parts.
ITT Thompson Industries, Div.—Plant #4 (company).	Lake City, FL	6/17/80	6/12/80	TA-W-9,216	Auto component parts.
ITT Thompson Industries, Div.—Plant #8 (company).	Holly Springs, MI	6/17/80	6/12/80	TA-W-9,217	Auto component parts.
ITT Thompson Industries, Div.—Plant #10 (company).	Valdosta, GA	6/17/80	6/12/80	TA-W-9,218	Auto component parts.
Poly Mar Products, Inc. (company)	Terre Haute, IN	5/17/80	6/6/80	TA-W-9,219	Auto polyethylene seat covers.
C.J. Bachner & Sons, Inc. (ACTWU)	Gloversville, NY	6/25/80	6/20/80	TA-W-9,220	Ladies' dress gloves.
Gate Mills, Inc. (ACTWU)	Johnstown, NY	6/25/80	6/20/80	TA-W-9,221	Men's and ladies' dress and sport gloves.
Joseph P. Conroy, Inc. (ACTWU)	Johnstown, NY	6/25/80	6/20/80	TA-W-9,222	Men's and ladies' gloves and mittens, dress and sport.
Mario Papa & Sons, Inc. (ACTWU)	Gloversville, NY	6/25/80	6/20/80	TA-W-9,223	Men's and ladies' dress and sport gloves.
NL Industries (Teamsters)	Pedricktown, NJ	6/25/80	6/23/80	TA-W-9,224	Lead for batteries, etc.
Pagano Gloves, Inc. (ACTWU)	Johnstown, NY	6/25/80	6/20/80	TA-W-9,225	Men's and ladies' dress and sport gloves.
Star Foam Products (workers)	Troy, MI	6/25/80	6/20/80	TA-W-9,226	Molding dies.
Benham Coal, Inc. (workers)	Benham, KY	6/20/80	6/16/80	TA-W-9,227	Coal.
Cuyahoga Valley Railroad Co. (United Transportation Union).	Cleveland, OH	5/19/80	5/12/80	TA-W-9,228	Transportation service for J-L Steel Corp.
Island Steel Co. (company)	East Chicago, IN	6/23/80	6/19/80	TA-W-9,229	
Marx Manufacturing Corp. (workers)	Taylor, MI	6/20/80	6/18/80	TA-W-9,230	Sheet metal stampings.
McQuay, Norris Inc. Plant #2 (UAW)	St. Louis, MO	6/20/80	6/18/80	TA-W-9,231	Warehouse for McQuay-Norris Inc.
McQuay, Norris Inc. Plant #1 (UAW)	St. Louis, MO	6/20/80	6/18/80	TA-W-9,232	Piston rings.
Pep Industries (IAM)	Nashville, TN	6/20/80	6/17/80	TA-W-9,233	Wire harness.
Revere Copper & Brass (UAW)	Detroit, MI	6/23/80	6/20/80	TA-W-9,234	Copper and strip mill products.
Youngstown & Northern Railroad Company (Brotherhood of Railway clerks).	Youngstown, OH	5/20/80	5/8/80	TA-W-9,235	Railroad service for U.S. Steel.
The Arrow Company (ACTWU)	Huntington, PA	6/23/80	6/19/80	TA-W-9,236	Men's sports and dress shirts.
The Arrow Company (ACTWU)	Elysburg, PA	6/23/80	6/19/80	TA-W-9,237	Men's sports and dress shirts.
The Arrow Company (ACTWU)	Lewiston, PA	6/23/80	6/19/80	TA-W-9,238	Men's sports and dress shirts.
ATF Davidson Co. (USWA)	Whitinsville, MA	4/21/80	4/15/80	TA-W-9,239	Textile preparatory machinery.
Elkton Fashion Ind. (workers)	Elkton, MD	4/7/80	3/28/80	TA-W-9,240	Men's clothing.
General Electric Co. Memphis Lamp Plant (workers).	Memphis, TN	5/13/80	5/8/80	TA-W-9,241	Lights for automobiles.
Hayes-Albion Corp. Albion Division (UAW)	Albion, MI	6/23/80	6/19/80	TA-W-9,242	Malleable iron castings.
ITT Marlow (IAM)	Midland Park, NJ	6/23/80	6/18/80	TA-W-9,243	Manufactures pumps for construction industry dry cleaning.
Whitin Casting Co. (USWA)	Whitinsville, MA	4/21/80	4/15/80	TA-W-9,244	Machinery and graphic arts.
Miss Erica, Inc. (workers)	Hialeah, FL	3/28/80	3/24/80	TA-W-9,245	Women's vinyl handbags.

[FR Doc. 80-20749 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7657]

Lewis and Clark Chrysler Plymouth, Inc., St. Louis, Mo.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers at Lewis and Clark Chrysler Plymouth, Inc., St. Louis, Missouri. The workers at Lewis and Clark Chrysler Plymouth, Inc. are engaged in providing the service of selling, repairing and servicing automobiles.

The investigation revealed that workers of Lewis and Clark Chrysler Plymouth, Inc. do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Lewis and Clark Chrysler Plymouth, Inc. may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Lewis and Clark Chrysler Plymouth, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Lewis and Clark Chrysler Plymouth, Inc.

Conclusion

After careful review, I determine that all workers of Lewis and Clark Chrysler Plymouth, Inc., St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of July 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-20758 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7455]

Miller Plating Corp., Jackson, Mich.; Negative Determination Regarding Application for Reconsideration

By letter of June 17, 1980, a company official requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of the Miller Plating Corporation, Jackson, Michigan. The determination was published in the Federal Register on June 6, 1980, (45 FR 38180).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

A company official claims that workers at the Miller Plating Corporation, Jackson, Michigan, have met the three statutory requirements under Section 222 of the Trade Act of 1974 necessary to be certified eligible for trade adjustment assistance.

The Department's review however, showed that workers of Miller Plating do not produce an article within the meaning of Section 222(3) of the Act. Rather, the workers perform the service of plating and painting.

Service workers may only be certified if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related by ownership to the firm providing the service, or a firm related by control with the reduction in demand for services originating at a production facility whose workers independently meet the statutory criteria for certification and that reduction must relate directly to the product impacted by imports. The workers of Miller Plating do not fit within any of the categories described above.

Conclusion

After review of the application and the investigation file, I conclude that there has been no error or misinterpretation of fact or of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 3rd day of July 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-20754 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of negative determinations regarding eligibility to apply for worker adjustment assistance issued during the period June 30–July 3, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of workers in the workers's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely,

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-7624; CertainTeed Corp.; Corbin, Ky.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at the Corbin, Kentucky plant of CertainTeed Corporation. The workers produce sound insulation for automobiles.

The investigation revealed that criterion (1) has not been met.

There have been no layoffs and no reduction of hours worked at the Corbin, Kentucky plant in the one year period prior to the date of the petition. There is no immediate threat of separation of workers at this plant.

In this case, therefore, the certifying officer has determined that all workers of the Corbin, Kentucky plant of CertainTeed Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7773; Charlies' Chevrolet, Inc., St. Louis, Mo.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Charlies' Chevrolet, Incorporated, St. Louis, Missouri. The workers at Charlies' Chevrolet, Incorporated are engaged in providing the service of selling, servicing, and repairing automobiles.

The investigation revealed that workers of Charlies' Chevrolet, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Charlies' Chevrolet, Incorporated may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Charlies' Chevrolet, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Charlies' Chevrolet, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of Charlies' Chevrolet, Incorporated, St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7656; DiSalvo's, Inc., St. Louis, Mo.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Association of Machinists and Aerospace Workers Union on behalf of workers at DiSalvo's, Inc., St. Louis, Missouri. The workers at DiSalvo's, Inc. are engaged in providing the service of selling, servicing, and repairing automobiles.

The investigation revealed that workers of DiSalvo's, Inc. do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of DiSalvo's, Inc. may be certified only if their separation was caused importantly be a reduced demand for their services from a parent firm, a firm otherwise related to DiSalvo's, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of DiSalvo's, Inc.

In this case, therefore, the certifying officer has determined that all workers of DiSalvo's, Inc., St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7641; Earl C. Smith, Inc., Flint, Mich.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers at Earl C. Smith, Incorporated, Flint, Michigan. The workers at Earl C. Smith, Incorporated are engaged in providing the service of transporting general commodities by truck.

The investigation revealed that workers of Earl C. Smith, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Earl C. Smith, Incorporated may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Earl C. Smith, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Earl C. Smith, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of Earl C. Smith, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7698; Eaton Corp., Kalamazoo, Mich.

The investigation was initiated on April 28, 1980 in response to a petition which was filed by the Allied Industrial Workers on behalf of workers at the Kalamazoo, Michigan plant of Eaton Corporation. Workers at the Kalamazoo plant produce transmissions for heavy-duty trucks and components for such transmissions.

The investigation revealed that criterion (3) has not been met.

Industry sources indicate that imports of transmissions for heavy-duty trucks (gross vehicle weigh over 33,000 pounds) were negligible in 1978, 1979 and the first quarter of 1980.

Component parts produced at the Kalamazoo plant are exclusively for use in Eaton-produced transmissions. No other manufacturer may legally produce and market parts for replacement purposes in Eaton-produced transmissions.

In this case, therefore, the certifying officer has determined that all workers of the Kalamazoo, Michigan plant of Eaton Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7661; Erie Mining Co., Hoyt Lakes, Minn.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the United Steelworkers of America on behalf of workers at the Erie Mining Company, Hoyt Lakes, Minnesota. Workers at the plant produce iron ore pellets.

The investigation revealed that criterion (3) has not been met.

Workers at the Erie Mining Company were certified as eligible to apply for adjustment assistance benefits on March 1, 1978 (TA-W-2794, 2795). The certification was in effect until March 1, 1980.

U.S. imports of iron ore, pellets and sinter declined both absolutely and relative to domestic production in the first quarter of 1980 compared to the same quarter in 1979.

Three domestic steel companies share in the ownership of the Erie Mining Company and are the sole domestic customers of the mine. A Department of Labor survey revealed that none of the three steel companies increased its reliance on imported iron ore pellets relative to domestically produced pellets in the first four months of 1980 compared to the same period in 1979.

Workers at the plants to which the predominant portion of the iron ore pellets are shipped have recently been denied eligibility to apply for adjustment assistance.

In this case, therefore, the certifying officer has determined that all workers of Erie Mining Company, Hoyt Lakes, Minnesota are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7775; Gumpp Cadillac, Inc., Toledo, Ohio

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Gumpp Cadillac, Inc., Toledo, Ohio. The workers at Gumpp Cadillac, Inc. are engaged in providing the service of selling, servicing and repairing automobiles.

The investigation revealed that workers of Gumpp Cadillac, Inc. do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals.

Therefore, Gumpp Cadillac, Inc. workers may be certified only if their separation was caused importantly by a reduced demand for their service from a parent firm, a firm otherwise related to Gumpp Cadillac, Inc. by ownership, or a firm related by control. In any case the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for the workers of Gumpp Cadillac, Inc.

In this case, therefore, the certifying officer has determined that all workers of Gumpp Cadillac, Inc., Toledo, Ohio are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7754; Hammond-Bunch Chrysler Plymouth Dodge Truck, Inc., Arab, Ala.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Hammond-Bunch Chrysler, Arab, Alabama. The investigation revealed that the full name of the firm is Hammond-Bunch Chrysler Plymouth Dodge Truck, Inc. The workers at Hammond-Bunch Chrysler are engaged in providing the service of selling, servicing, and repairing automobiles.

The investigation revealed that workers of Hammond-Bunch Chrysler do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Hammond-Bunch Chrysler may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Hammond-Bunch Chrysler by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Hammond-Bunch Chrysler.

In this case, therefore, the certifying officer has determined that all workers of Hammond-Bunch Chrysler Plymouth Dodge Truck, Inc., Arab, Alabama are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7755; Hugh Gorey Ford, Inc., Imlay City, Mich.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Hugh Gorey Ford, Inc., Imlay City, Michigan. The workers at Hugh Gorey Ford, Inc. are engaged in providing the service of selling, servicing, and repairing automobiles.

The investigation revealed that workers of Hugh Gorey Ford, Inc. do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S Court of Appeals. Therefore, Hugh Gorey Ford, Inc. workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Hugh Gorey Ford, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Hugh Gorey Ford, Inc.

In this case, therefore, the certifying officer has determined that all workers of Hugh Gorey Ford, Inc., Imlay City, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7711; Kenton Manufacturing Co., Inc.; New Kensington, Pa.

The investigation was initiated on April 28, 1980 in response to a petition which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers at Kenton Manufacturing Company, Incorporated, New Kensington, Pennsylvania. The workers produce ladies' skirts, tops and shirts.

The investigation revealed that criterion (3) has not been met.

Kenton Manufacturing Company, Incorporated, New Kensington, Pennsylvania is a contractor producing ladies' skirts, tops, jackets and shirts. Ladies' skirts constituted the entire production at Kenton from November 1977 to November 1979. From November 1979 to April 1980, Kenton produced ladies' tops and shirts. The Department of Labor conducted a survey of the manufacturers from whom Kenton Manufacturing Company received

contract work. The manufacturers from whom Kenton Manufacturing Company worked did not utilize foreign contractors or import ladies' skirts in 1978, 1979 or in the first four months of 1980.

The manufacturers from whom Kenton Manufacturing Company, Incorporated received order reported a constant level of sales between 1978 and 1979, and increasing sales in the period January–April 1980 compared to the same period of 1979. These manufacturers increased their utilization of other domestic contractors rather than Kenton Manufacturing Company, Incorporated in the period January–April 1980 compared to the period January–April 1979.

In this case, therefore, the certifying officer has determined that all workers of Kenton Manufacturing Company, Incorporated, New Kensington, Pennsylvania are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7638; Maiers Motor Freight, Vassar, Mich.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers at Maiers Motor Freight, Vassar, Michigan. The workers at Maiers Motor Freight are engaged in providing the service of transporting general commodities by truck.

The investigation revealed that workers of Maiers Motor Freight do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Maiers Motor Freight may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Maiers Motor Freight by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Maiers Motor Freight.

In this case, therefore, the certifying officer has determined that all workers of Maiers Motor Freight, Vassar, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7659; Mayr Brothers Logging Co., Willapa Division, Raymond, Wash.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Woodworkers of America on behalf of workers at Mayr Brothers Logging Company, Willapa Division, Raymond, Washington, Workers at the sawmill produce 2" x 4" studs and railroad ties.

The investigation revealed that criterion (3) has not been met.

Mayr Brothers purchased the Raymond Sawmill in February 1979. Employment at the sawmill increased in each quarter of 1979 and in the first quarter of 1980, when compared to the previous quarter. However, several workers were laid off in March and April of 1980.

A Department of Labor survey revealed that most of the Raymond Sawmill's customers either did not purchase imported studs or reduced their purchases of imported studs in the first four months of 1980 compared to the same period in 1979. Customers with increased imports during this period also increased, or held constant, their purchases from the Raymond Sawmill.

In this case, therefore, the certifying officer has determined that all workers of Mayr Brothers Logging Company, Willapa Division, Raymond, Washington are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7639; McLean Trucking Co., Flint, Mich.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers at McLean Trucking Company, Flint, Michigan. The workers at McLean Trucking Company are engaged in providing the service of transporting general commodities by truck.

The investigation revealed that workers of McLean Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of McLean Trucking Company may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to McLean Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of McLean Trucking Company.

In this case, therefore, the certifying officer has determined that all workers of McLean Trucking Company, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7753; Roy O'Brien, Inc., St. Clair Shores, Mich.

The investigation was initiated on April 28, 1980 in response to a petition which was filed on behalf of workers at Roy O'Brien, Inc. The workers at Roy O'Brien, Inc. are engaged in providing the service of selling, servicing, and repairing automobiles.

The investigation revealed that workers of Roy O'Brien, Inc. do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Roy O'Brien may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Roy O'Brien, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Roy O'Brien, Inc.

In this case, therefore, the certifying officer has determined that all workers of Roy O'Brien, Inc., St. Clair Shores, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7556; Textron, Inc., Burkart Randall Division, Wilmington, Ohio

The investigation was initiated on April 7, 1980 in response to a petition which was filed by the United Brotherhood of Carpenters and Joiners of America on behalf of workers at the Wilmington, Ohio plant of the Burkart

Randall Division of Textron, Incorporated. Workers at the plant primarily produce exhaust pipes and fuel filler pipes for automobiles.

The investigation revealed that criterion (3) has not been met.

U.S. imports of filler neck assemblies for gas tanks which include fuel filler pipes for original equipment manufacture were negligible in 1978 and 1979.

The Department conducted a survey of exhaust pipe customers of the Wilmington plant. The survey revealed that customers which decreased purchases of exhaust pipe from the Wilmington plant in 1979 compared to 1978 did not increase purchases of imports over that period. The survey further revealed that customers which purchased exhaust pipe in 1980 purchased an insignificant proportion of imported exhaust pipe.

Imported cars cannot be considered to be like or directly competitive with exhaust pipes and fuel filler pipes produced at the Wilmington plant. Imports of exhaust pipes and fuel filler pipes must be considered in determining import injury to workers producing exhaust pipes and fuel filler pipes at the Wilmington, Ohio Plant of the Burkart Randall Division of Textron, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of the Wilmington, Ohio plant of the Burkart Randall Division of Textron, Incorporated are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7393-7394; United Auto Workers, Local 110 & Local 136, Fenton, Mo.

The investigation was initiated on March 17, 1980 in response to a petition which was filed on behalf of workers at the United Auto Workers, Local 110 and Local 136, Fenton, Missouri. The workers at the United Auto Workers provide clerical services.

The investigation revealed that workers of the United Auto Workers do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of the United Auto Workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the United Auto Workers by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for cerification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of the United Auto Workers, Local 110 and Local 136, Fenton, Missouri.

In this case, therefore, the certifying officer has determined that all workers of the United Auto Workers, Local 110 and Local 136, Fenton, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7644; United Trucking Service, Inc., Flint, Mich.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers at United Trucking Service, Incorporated, Flint, Michigan. The workers at United Trucking Service, Incorporated are engaged in providing the service of transporting general commodities by truck.

The investigation revealed that workers of United Trucking Service, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor was consistently determined that the performance of services does not constitute production of an article, as required by Section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of United Trucking Service, Incorporated may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to United Trucking Service, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of United Trucking Service, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of United Trucking Service, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7325; Westinghouse Electric Corp. Reform, Ala.

The investigation was initiated on March 10, 1980 in response to a petition which was filed by the International Brotherhood of Electric Workers on behalf of workers at the Reform, Alabama plant of the Westinghouse Electric Corporation. Workers produce photoflash, decorative, and miniature automobile lamps.

The investigation revealed that criterion (3) has not been met.

The petitioners appear to allege that imports of cameras with electronic flash attachments have contributed importantly to declines in sales and employment at the Reform, Alabama plant fo Westinghouse Electric Corporation. Imports of photoflash lamps must be considered in determining import injury to workers producing photoflash lamps at the Reform, Alabama facility of Westinghouse Electric Corporation.

The ratio of U.S. imports of photoflash lamps to domestic production was negligible from 1975 through 1979.

The petitioners also appear to allege that imports of electronic flashes have contributed importantly to declines in sales and employment at the Reform, Alabama plant of Westinghouse Electric Corporation. Industry and Department analysts agree that electronic flash units may be "like a directly competitive" with photoflash lamps.

Surveyed customers indicated that they did not purchase any imported photoflash lamps or electronic flash units in 1978, 1979 or the first quarter of 1980. Most customers did not purchase electronic flash units at all.

Production of decorative lamps and miniature automobile lamps increased in 1979 compared to 1978. Sales of decorative lamps increased and sales of miniature automobile lamps remained constant in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of the Reform, Alabama facility of the Westinghouse Electric Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7646; Yellow Freight System, Inc., Flint, Mich.

The investigation was initiated on April 21, 1980 in response to a petition which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers at Yellow Freight System, Incorporated, Flint, Michigan. The workers at Yellow Freight System, Incorporated are engaged in providing

the service of transporting general commodities by truck.

The investigation revealed that workers of Yellow Freight System, Incorporated do not produce an article within the meaning of Section 222(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by Sections 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals. Therefore, workers of Yellow Freight System, Incorporated may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Yellow Freight System, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Yellow Freight System, Incorporated.

In this case, therefore, the certifying officer has determined that all workers of Yellow Freight System, Incorporated, Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of June 30–July 3, 1980.

Signed at Washington, D.C., this 7th day of July 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-20757 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7114]

Penn Children's Dress Corp., Mayfield, Pa.; Negative Determination Regarding Application for Reconsideration

By letter of June 9, 1980, a former employer requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing children's dresses at Penn Children's Dress Corporation, Mayfield, Pennsylvania. The determination was published in the Federal Register on June 6, 1980, (45 FR 38193).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

A former employer claims that the Department limited its investigation only to the impact of dress importation instead of to children's wear. He claims that the dresses which Penn Children's made compete for the same dollars that purchases children's blouses, sweaters, skirts, pants, and jeans.

The Department's review showed that the Penn Children's Dress Corporation was a garment contractor producing primarily children's dresses for a manufacturer. Workers of Penn Children's were denied eligibility because they did not meet the "contributed importantly" test of Section 222 of the Trade Act of 1974. The Department's survey showed that the manufacturer for which Penn Children performed contract work, indicated an increased reliance on other domestic contractors and in-house production. A survey of the customers of the manufacturer showed that most customers either did not import children's dresses or decreased their reliance on imported dresses. U.S. imports of children's dresses decreased absolutely in 1979 compared to 1978.

The Department does not see substantial validity in the former employer's claim. It has been the practice of the Department of Labor to focus on the actual product produced by the petitioning workers so as to discern the effects of direct import competition. Within the meaning of the Act, the Department does not regard children's dresses are "like or directly competitive with" children's dresses as "like or directly competitive with" children's skirts, blouses, sweaters and sportswear. Even if the Department were to concede some degree of competition, however, U.S. aggregate imports of Women's, Misses' and Children's blouses and skirts; slacks and shorts; coats and jackets; and sweaters, decreased in quantity in 1979 compared to 1978. Only imports of women's, misses' and children's skirts increased in 1979 over 1978, and the increase was slight.

After careful review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 3rd day of July 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-20755 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8705]

Ship 'n Shore, Forest City Division, Forest City, Penn.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1980 in response to a worker petition received on June 3, 1980 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' tops and sportswear at Ship 'n Shore, Forest City Division, Forest City, Pennsylvania.

The petitioning group of workers in this case was included in a determination (TA-W-6942) issued on April 4, 1980 which certified as eligible to apply for adjustment assistance all workers at the Forest City, Pennsylvania plant of Ship 'n Shore. Since all workers separated, totally or partially, from the Forest City, Pennsylvania plant of Ship 'n Shore on or after November 1, 1979 (impact date) and before April 4, 1982 (expiration date of the certification) are covered by an existing determination, a new investigation would serve no purpose. Therefore, this investigation has been terminated.

Signed at Washington, D.C., this 2d day of July 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-20751 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8375]

Timex Components, Inc., Somerset, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 27, 1980 in response to a worker petition received on May 21, 1980 which was filed on behalf of former workers at the Somerset, New Jersey plant of Timex Components, Incorporated, a wholly-owned

subsidiary of Timex Corporation. The workers at the Somerset plant produced liquid crystal displays.

The investigation revealed that another petition (TA–W–8289) had also been filed on behalf of the same group of workers at the Somerset, New Jersey plant of Timex Components, Incorporated. Since the identical group of workers is the subject of the ongoing investigation (TA–W–8289), a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June 1980.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 80–20752 Filed 7–10–80; 8:45 am]

BILLING CODE 4510–28–M

Steel Tripartite Advisory Committee; Meeting

The Steel Tripartite Advisory Committee was established under the Federal Advisory Committee Act, 5 U.S.C. Appr. (1976), to advise the Secretary of Labor and Secretary of Commerce on international and domestic issues affecting the U.S. steel and industry and labor.

Notice is hereby given that the Steel Tripartite Advisory Committee will meet at 2:00 P.M. on July 21, 1980, in the Secretary's Conference Room S–2508, U.S. Department of Labor, 200 Constitution Ave., N.W. Washington, D.C., 20210.

To be discussed are follow-up reports and recommendations from the five working groups on 1) modernization and capital formation, 2) technology research and development, 3) the environment, 4) community and labor adjustment assistance, and 5) international trade. Due to scheduling conflicts of many participants, insufficient time was available to give 15 days advance notice to the meeting. The public is invited to attend. A limited number of seats will be available to the public on a first-come basis.

For additional information contact:

Mr. Joseph S. Papovich, Executive Secretary, Steel Tripartite Advisory Committee, Bureau of International Labor Affairs, U.S. Department of Labor, Washington, D.C., 20210, telephone: (202) 523–6227/6201.

Official records of the meeting will be available for public inspection at room S–5315, U.S. Department of Labor, Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of July 1980.

Herbert N. Blackman,

Acting Deputy Under Secretary for International Affairs, U.S. Department of Labor.

[FR Doc. 80–20764 Filed 7–10–80; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 80–53]

Performance Review Board, Senior Executive Service

The Civil Service Reform Act (4314(C)(4)) requires that appointments of individual members to a Performance Review Board be published in the Federal Register.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals will be serving on the Committee and the Board as of July 1, 1980:

Senior Executive Committee

Alan M. Lovelace, Chairperson
Edwin C. Kilgore
Robert F. Allnutt

Performance Review Board

Robert F. Allnutt, Chairperson
Carl E. Grant, Executive Secretary
Leonard Jaffe (Term expires July 1983)
John M. Klineberg (Term expires July 1981)
Gerald D. Griffin (Term expires July 1981)
Gerald J. Mossinghoff (Term expires July 1982)
Philip E. Culbertson (Term expires July 1982)
Richard H. Petersen (Term expires July 1983)
Clifford E. Charlesworth (Term expires July 1983)
Edwin C. Kilgore (Serves Ex-Officio in his capacity as Chairperson, Executive Resources Board).

Robert A. Frosch,

Administrator.

[FR Doc. 80–20676 Filed 7–10–80; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Task Group No. 11 of the NSF Advisory Council; Postponement of Meeting

Task Group No. 11 of the NSF Advisory Council was scheduled to meet in Washington, D.C. on July 14, 1980. The meeting has been postponed until July 25, 1980. For further information, please contact Dr. Mary Clutter, NSF Liaison, at (202) 357–7989.

The notice for this meeting appeared in the Federal Register, Vol. 45, page 43288 on June 26, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

July 9, 1980.

[FR Doc. 80–20900 Filed 7–10–80; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: STN 50–528, STN 50–529, STN 50–530]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station Units 1, 2 and 3); Receipt of Application for Facility Operating Licenses; Availability of Applicant's Environmental Report; and Consideration of Issuance of Facility Operating Licenses and Notice of Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application, including the Final Safety Analysis Report, for facility operating licenses from Arizona Public Service Company on behalf of itself and Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, and Arizona Electric Power Cooperative, Inc., (the applicants) to possess, use, and operate Palo Verde Nuclear Generating Station, Units 1, 2 and 3, three pressurized water nuclear reactors (the facilities), located on the applicants' site in Maricopa County, Arizona, approximatrely 36 miles west of the City of Phoenix. Each of the reactors is designed to operate at a core power level of 3800 megawatts thermal, with an equivalent net electrical output of approximately 1304 magawatts each. The Palo Verde design incorporates by reference the Combustion Engineering, Inc., standard "System 80" nuclear steam supply system.

The applicants hae also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of

the Commission in 10 CFR Part 51, an environmental report, which incorporates by reference the environmental report submitted as part of the application for construction permits for the facilities. The report, which discusses environmental considerations related to the proposed operation of the facilities, is being made available at the State Clearinghouse, Office of Economic Planning and Development, State of Arizona, 1700 West Washington Street, Phoenix, Arizona 85007, and at the Maricopa Association of Governments, 1820 West Washington Street, Phoenix, Arizona 85007.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the Federal Register, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the Federal Register.

The Commission will consider the issuance of facility operating licenses to Arizona Public Service Company, et al., which would authorize the applicants to possess, use and operate the Palo Verde Nuclear Generating Station, Units 1, 2 and 3, in accordance with the provisions of the licenses and the technical specifications appended thereto, upon: (1) the completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants' application for facility operating licenses by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I. Construction of the facilities was authorized by Construction Permit Nos. CPPR-141, CPPR-142 and CPPR-143, issued by the Commission on May 25, 1976. Construction of unit 1 is anticipated to be completed by November 1982, Unit 2 by November 1983, and Unit 3 by November 1985.

With regard to Executive Order 11988 Floodplain Management, the applicants have determined that the Palo Verde facilities will have no structures (or construction activities) located on the floodplain.

Prior to issuance of any operating licenses, the Commission will inspect the facilities to determine whether they have been constructed in accordance with the application, as amended, and the provisions of the construction permits. In addition, the licenses will not be issued until the Commission has made the findings reflecting its review of the application Under the Act, which will be set forth in the proposed licenses, and has concluded that the issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the licenses, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By July 31, 1980, the applicants may file a request for a hearing with respect to issuance of the facility operating licenses and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by August 11, 1980. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Arthur D. Gehr, Esq., Snell and Wilmer, 3100 Valley Center, Phoenix, Arizona 85073, attorney for the applicants. Any questions or request for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and License Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR Sections 2.714(a)(1)(i)–(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the

application for the facility operating licenses and the applicants' environmental report dated June 19, 1980, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Arizona. As they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating licenses; (5) the proposed facility operating licenses; and (6) the technical specifications, which will be attached to the proposed facility operating licenses.

Copies of the proposed operating licenses and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 2nd day of July, 1980.

For the Nuclear Regulatory Commission.

A. Schwencer,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-20661 Filed 7-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-325]

Carolina Power & Light Co; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-71, issued to Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Unit No. 1 (the facility), located in Brunswick County, North Carolina. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to establish revised safety and operating limits for BSEP Unit 1 operation in operating Cycle No. 3. The amendment also changes the safety-relief valve pressure setpoints for 3 of the 11 valves to provide a minimum nominal lift setting differential for each valve pair of 20 psi.

The applications for amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(5) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the applications for amendment dated May 23, May 30, as supplemented June 4, and June 25, 1980, (2) Amendment No. 29 to License No. DPR-71, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Southport Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 1st day of July 1980.

For The Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating reactors Branch #2, Division of Licensing.

[FR Doc. 80-20662 Filed 7-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 25 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment modifies the Technical Specifications on surveillance frequency for venting the Emergency Core Cooling System pump casings and discharge piping high points. This amendment also corrects a typographical error in Table 3.7-3, "Safety of Hydraudlic Snubbers".

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 23, 1978, as supplemented January 26, 1979, (2) Amendment No. 25 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of July 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-20663 Filed 7-10-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric & Power Co; Issuance of Amendment to License NPF-7

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Facility License NPF-7, issued to the Virginia

Electric and Power Company (licensee), which added Technical Specification 8.13 to Appendix A of the Technical Specifications for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment permits the licensee to conduct the special low power test program as presented in our Safety Evaluation, dated July 2, 1980.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. The activity authorized by the amendment is encompassed by the overall action involving the proposed issuance of an operating license for which prior public notice was issued in the Federal Register on May 25, 1973 (38 FR 13772).

The Commission has determined that the issuance of this amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the amendment is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) the application for amendment, dated June 18, 1980, (2) Amendment No. 1 to NPF-7, and (3) the Commission's related Safety Evaluation concerning a Special Low Power Test Program and Emergency Operating Procedures.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document rooms in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and at the Office of the Board of Supervisors, Louisa County Courthouse, P.O. Box 27, Louisa, Virginia 23093. A copy of items 2 and 3 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 3rd day of July, 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-20634 Filed 7-10-80; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR SAFETY OVERSIGHT COMMITTEE

Open Meeting

The Nuclear Safety Oversight Committee will meet from 9:30 a.m. to 12:45 p.m. and from 2:15 p.m. to 5:00 p.m. on July 28, 1980 and from 9:30 a.m. to 12:00 noon and from 1:30 p.m. to 4:00 p.m. on July 29, 1980 in room 2010 of the New Executive Office Building, located on the southeast corner of 17th and Pennsylvania Avenue, Northwest, Washington, D.C. Public entrance to the building is on 17th Street, Northwest between Pennsylvania Avenue and H Street, Northwest.

The Committee was established by Executive Order 12202 on March 18, 1980 in response to the recommendations of the President's Commission on the Accident at Three Mile Island (the Kemeny Commission). Generally, the Committee is responsible for monitoring the progress of the utilities and their suppliers, the Nuclear Regulatory Commission, other federal agencies, and state and local authorities in implementing the Kemeny Commission's recommendations and in improving the safety of nuclear power. The Committee will report periodically to the President and the public on its findings.

During the meeting the Committee will receive testimony and, when appropriate, written materials and documents, concerning three substantive matters: (1) the nature of the Committee's responsibilities as set forth in Executive Order 12202 of March 18, 1980 creating the Committee; (2) the Nuclear Regulatory Commission's (NRC) "Action Plan Developed as a Result of the TMI-2 Accident," designated NUREG-0660 and available through the Document Management Branch, Division of Technical Information and Document Control, NRC, Washington, D.C. 20555; and (3) the procedure utilized in the federal decision-making process as it relates to nuclear safety and public and private participation. Testimony on these three matters will be received in accordance with the following agenda:

Monday, July 28, 1980

- John F. Ahearne, Chairman of the Nuclear Regulatory Commission.
- Peter A. Bradford, Commissioner of the Nuclear Regulatory Commission.
- Milton S. Plesset, Chairman, and other representatives of the NRC's Advisory Committee on Reactor Safeguards (ACRS). The ACRS's duties are set forth in 10 CFR 1.20 (1980).

Tuesday, July 29, 1980

- Gus Speth, Chairman of the Council on Environmental Quality, Executive Office of the President.
- Dr. Frank Press, Science Advisory to the President and Director, Office of Science and Technology Policy, Executive Office of the President.
- Roger Mattson, Director, Division of Systems Safety, Nuclear Regulatory Commission.

In addition to these substantive matters, the Committee will discuss as a group certain aspects of its internal personal rules, operating practices, additional staff selections, organizational structure and consultative arrangements, particularly as they relate to the substantive mandates of the Executive Order. This portion of the Committee meeting is scheduled for 2:15 p.m. to 5:00 p.m. on July 28, 1980.

The meeting will be open to public observation. Written comments or statements by the public may be submitted at anytime before or after the meeting and should be related to the three substantive matters identified above. Approximately 60 seats will be available for the public on a first-come, first serve basis. Minutes of the meeting will be available 30 days thereafter and may be examined within the Committee's office at 1133 15th Street, Northwest, Room 307, Washington, D.C. 20005.

For further information contact Margo von Kaenel, Executive Assistant at 202/653-8468.

Margo. W. von Kaenel,

Executive Assistant.

[FR Doc. 80-20680 Filed 7-10-80; 8:45 am]

BILLING CODE 6820-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-5979]

July 3, 1980.

In the matter of Filmways, Inc., 6% convertible subordinated debentures (due 1-15-88); application to withdraw from listing and registration.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-

2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Filmways, Inc. ("Filmways") debentures have been listed and registered for trading on both the Amex and the New York Stock Exchange, Inc. ("NYSE") since June 22, 1979. The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the debentures on the Amex and the NYSE.

2. This application relates solely to withdrawal of the debentures from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before July 24, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20851 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[70-6472; Rel. No. 21649]

Alabama Power Co.; Proposal to Issue First Mortgage Bonds and Preferred Stock at Competitive Bidding

July 3, 1980.

Notice is hereby given that Alabama Power Company ("Alabama") 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes to issue and sell up to $300,000,000 aggregate principal amount of its First Mortgage Bonds ("new bonds"). Of such amount it is proposed that up to $150,000,000 principal amount of new Bonds ("initial series") will be issued in September, 1980 and up to $150,000,000 principal amount of new Bonds ("additional series") will be issued in one or more series from time to time not later than February 28, 1981. It is proposed that each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price obtainable but for a price to Alabama of not less than 98% nor more than 101¾% of the principal amount thereof, plus accrued interest.

The new Bonds will be issued under the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by Supplemental Indentures to be dated as of the first day of the month of the date on which each series of new Bonds is issued. It is further proposed that Alabama decide on the term of each series of the new Bonds after the date of the respective public invitation for proposals and then in each case notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of each bidding. It is also proposed that in each such notice Alabama may designate a lesser aggregate principal amount of the new Bonds of the particular series to be issued and sold than that previously specified in the respective public invitation for proposals, and that Alabama reserve the right in its discretion to designate a principal amount or term for the new Bonds of a particular series different from that theretofore specified by notice to prospective bidders not less than 24 hours prior to the time of each bidding.

Alabama will provide that none of the new Bonds will be redeemed for a five-year period commencing with the first day of the month of issuance, respectively, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such new Bond through the use, directly or indirectly, of funds borrowed by Alabama at an effective interest cost to Alabama of less than the effective enterest cost to Alabama of the respective series of new Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the improvement (sinking) fund or the maintenance and replacement provisions of the above-mentioned Indenture or by the use of proceeds of released property.

Alabama also will convenant that it will not redeem any of the new Bonds of a particular series, in any year prior to the fifth year after the issuance of such series, through the operation of the improvement (sinking) fund provisions in a principal amount which would exceed the improvement fund requirement attributable to such series (i.e., 1% of the aggregate principal amount of such series).

Alabama also proposes to issue up to $100,000,000 aggregate stated value of its Preferred Stock, with a stated value of up to $100 per share ("new Preferred Stock"), and to sell such securities at competitive bidding for the best price obtainable (after giving effect to the purchasers' compensation hereinafter referred to) but for a price to Alabama (before giving effect to such purchasers' compensation) of not less than 100% nor more then 102% of the stated value per share, which shall also be the public offering price per share. In addition, Alabama proposes to pay to the purchasers of the new Preferred Stock compensation for their services in purchasing and making a public offering of such shares, which compensation shall be included as part of the competitive bidding on the new Preferred Stock. It is proposed that the new Preferred Stock be issued in one or more series from time to time not later than February 28, 1981.

The terms of each series of the new Preferred Stock will be established by amendment to the charter of Alabama. Alabama may also make provision for a cumulative sinking fund for the benefit of the new Preferred Stock which would retire not more than 5% annually of the number of shares initially issued of the particular series, commencing five years or later after the sale, with the noncumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming an additional like number of shares.

Alabama will provide that no share of the new Preferred Stock will be redeemed for a five-year period, commencing with the first day of the month of issuance, respectively, if such redemption is for the purpose or in anticipation of refunding such share directly or indirectly through the incurring of debt, or through the issuance of stock ranking equally with or prior to the new Preferred Stock as to dividends or assets, if such debt has an

effective interest cost to Alabama or such stock has an effective dividend cost to Alabama of less than the effective dividend cost to Alabama of the respective series of the new Preferred Stock.

Alabama may request by amendment hereto that one or more of such sales of new Bonds or new Preferred Stock be excepted from the competitive bidding requirements of Rule 50. Alabama proposes to use the proceeds from each sale of the new Bonds and the new Preferred Stock, along with other funds, to finance its business as an electric utility company, primarily the repayment of outstanding short-term indebtedness and the payment of costs incurred in its ongoing construction program.

Statements of the fees, commissions and expenses to be incurred in connection with each issuance and sale of securities, other than the respective underwriting discounts and commissions, will be filed by amendments to the application. The Alabama Public Service Commission has authorized the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Alabama states that any amendment and/or pertinent information to this application seeking authority to issue and sell any additional series of new Bonds or any series of new Preferred Stock will be filed not less than 10 business days prior to the proposed effective date of the supplemental order relating thereto. Alabama will concurrently serve a copy of any such amendment and/or pertinent information upon any person who had, not later than July 30, 1980, requested a hearing on or advice as to whether a hearing is ordered with respect to any additional series of new Bonds or any series of new Preferred Stock. Any person so served may then, not less than five business days prior to the proposed effective date of the supplemental order, request a hearing on the terms and conditions of the additional series of new Bonds or series of new Preferred Stock.

Notice is further given that any interested person may, not later than July 30, 1980, request in writing that a hearing be held on such matter, stating the nature of this interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as filed or as it may be amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20653 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[812-4692; Rel. No. 11244]

INA Cash Fund, Inc.; Notice of Application for Order of Exemption From Rules 2a-4 and 22c-1 Under the Act

July 3, 1980.

Notice is hereby given that INA Cash Fund, Inc. ("Applicant") 3531 Silverside Rd., Wilmington, Delaware 19810, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 11, 1980, and amendments thereto on June 13 and June 27, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation incorporated under the laws of the State of Maryland. Applicant states that its investment objective is to provide investors with preservation of capital, liquidity and, consistent with the foregoing objectives, the highest possible current income by investing in a broad range of money market instruments. Applicant invests in instruments consisting of securities issued or guaranteed by the United States government or any of its agencies or instrumentalities, time accounts (largely certificates of deposit) in and bankers' acceptances of large domestic commercial and savings banks and savings and loan associations, short-term corporate debt including commercial paper and variable amount master demand notes, and repurchase agreements. In addition, the Fund may invest in certificates of deposit of foreign branches of domestic commercial banks and engage in reverse repurchase agreements, subject to certain restrictions set forth in the Applicant's current prospectus.

Applicant states that when it commenced operations on November 5, 1979, its management decided that its net income, declared daily as a dividend, would include (i) interest accrued and discount earned (including both original issue and market discount), (ii) all unrealized appreciation and depreciation on the Applicant's portfolio securities, and (iii) all realized gains and losses on the Applicant's portfolio securities, less the applicable expenses of Applicant. It was decided to include all unrealized appreciation or depreciation in net income, rather than in net assets as certain other money market funds did, because the Applicant also undertook to use its best efforts to maintain a constant net asset value per share. Including unrealized appreciation or depreciation in net income had the undesirable effect of causing the Applicant's income to fluctuate. Fluctuations in income, however, were viewed by the Applicant as more acceptable than including unrealized appreciation and depreciation in net assets which posed the risk of breaking constant net asset value per share.

Applicant now proposes to change its dividend policy to include unrealized appreciation and depreciation in net assets, rather than in net income, and to round its net asset value per share to the nearest cent on a share value of $1.00. The proposed change in dividend policy has been occasioned by: (1) the desirability of increasing the proportion of the Applicant's portfolio which is invested in securities with remaining

maturities of greater than 60 days, and (2) the decision on the part of the National Association of Securities Dealers to prepare and disseminate for newspaper publication a weekly report of annualized yields of money market funds. Applicant states that since it will not in the foreseeable future want to purchase securities having maturities of greater than one year, the Board of Directors of Applicant has determined that the advantages of the change in dividend policy far exceed the disadvantages of complying with the restrictions which will be imposed upon the Applicant under a "penny rounding" exemptive order.

The application states that Applicant has since inception marked to the market its portfolio securities with more than 60 days to maturity using market quotations. Further the Applicant represents that, with the exception of the relief sought here, it will in all other respects value portfolio securities in accordance with IC-9786.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that its investors place primary importance upon maintaining a constant net asset value per share. It is the Applicant's view that unanticipated fluctuations in the daily dividend are inconsistent with most shareholders' wishes. Both individual and institutional shareholders frequently invest cash reserves which occur, for example, between settlements on other securities, for relatively short periods. Applicant asserts that the proposed change in dividend policy will provide the Fund shareholders with more stable and predictable dividend payments. Applicant contends that in determining to change its dividend policy, the Applicant's Board of Directors reviewed its investment objective and policies, its shareholders' reasonable expectations and desires, and the advantages and possible disadvantages of including unrealized appreciation and depreciation in net assets, rather than net income, and concluded that such change was consistent with the economic needs and desires of the Applicant's shareholders. Applicant further submits that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intend by the policy and provisions of the Act.

Applicant represents that, to the extent necessary, Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a $1.00 price per share, if the net asset value per share declines to a value below $.996 or rises to a value of above $1.004, respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objectives, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

Notice is further given that any interested person may, not later than July 28, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20062 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[812-4688; Rel. No. 11250]

Liquid Green Trust; Notice of Filing of an Application Pursuant to Section 6(c) of the Act for an Order of Exemption From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

July 3, 1980.

Notice is hereby given that Liquid Green Trust ("Applicant"), 207 Guaranty Building, Indianapolis, Indiana 46204, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 3, 1980, and amendments thereto on June 13, 1980 and June 17, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per unit according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a business trust organized and existing under the laws of the State of Indiana. Applicant has filed with the Commission a Registration Statement on Form N-1 pursuant to Section 8(b) of the Act and the Securities Act of 1933, as amended. The 1933 Act Registration Statement on Form N-1 has not been declared effective. Thus, Applicant has not yet commenced a public distribution of its shares.

Applicant states that it intends to operate as a "money market" fund designed as an investment vehicle for investors with temporary or short-term reserves. Applicant further states that its investment objective is to obtain maximum current income consistent with safety of capital and the maintenance of liquidity. To realize this objective, Applicant proposes to invest in certain high quality money market instruments consisting of (i) obligations issued by or guaranteed as to principal and interest by the U.S. Government, its agencies, or instrumentalities; (ii) obligations of the 150 largest (in terms of assets) domestic commercial banks and the United States branches or agencies of the 50 largest (in terms of assets) foreign commercial banks, including negotiable certificates of deposit, commercial paper and bankers acceptances with maturities not exceeding one year; (iii) commercial paper and variable amount master demand notes, with maturities not exceeding nine months, which at the time of purchase will be rated A-1 or A-2 by Standard & Poor's Corporation or Prime-1 or Prime-2 by Moody's Investors Service, Inc., or if not rated, issued by a company which at the time of investment has an outstanding debt issue rated at least A by Standard & Poor's or Moody's, provided Applicant's board of trustees has made an independent determination that the instrument presents minimal credit risks and is of high quality; (iv) corporate bonds and debentures which at the time of purchase have one year or less remaining to maturity and are rated at least AA by Standard & Poor's or Aa by Moody's; and (v) certain repurchase agreements with respect to obligations which, without regard to maturity, Applicant is authorized to invest.

According to the application, Unified Management Corporation, an investment adviser to four mutual funds and registered under the Investment Advisers Act of 1940, will act as Applicant's investment adviser. Applicant further states that its initial minimum investment will be $1,000, with a subsequent minimum investment of $500.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to utilize the amortized cost method of valuation.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant represents that its use of the amortized cost method of valuation will enable its unitholders to have the convenience of determining the value of their holdings by knowing the number of units they hold, thus simplifying their task of maintaining an investment record. Moreover, Applicant states that absent unusual circumstances amortized cost valuation will represent the fair value of Applicant's portfolio investments, and is appropriate and preferable for Applicant. Thus, Applicant contends that granting its requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant has further agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser. Applicant's board of trustees undertake—as a particular responsibility within their overall duty of care owed to Applicant's unitholders—to establish procedures reasonably designed, taking into account current market conditions and

Applicant's investment objective, to stabilize Applicant's net asset value per unit, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

(2) Included within the procedures adopted by the trustees are the following duties and responsibilities:

(a) Review by the trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from Applicant's $1.00 amortized cost price per unit, and the maintenance of records of such review.[1]

(b) In the event any deviation from Applicant's $1.00 amortized cost price per unit exceeds one-half of one percent, a requirement that the trustees will promptly consider what action, if any, should be initiated.

(c) where the trustees believe that the extent of any deviation from Applicant's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing unitholders, the trustees shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of units in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of Applicant; withholding dividends; or utilizing a net asset value per unit as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per unit; *provided,* however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of trustees' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than July 28, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20636 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicant states that to fulfill this condition, it intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by the trustees in the exercise of their discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[SR-NASD-80-5; Rel. No. 16957]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

July 3, 1980.

On May 5, 1980, the National Association of Securities Dealers, Inc. (the "Association"), 1735 K Street NW., Washington, D.C., filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which revises Schedule D of the Association's By-Laws to require that NASDAQ Level 1 service provide subscribers with inside quotations for each authorized security for which a minimum of two registered market makers are entering quotations during the day, except in the case of a locked or crossed market where only the highest bid would be displayed. The rule change also would require that, when quotations are released to the news media, Level 1 quotations be used in the case of NASDAQ Securities and bid and ask quotations representative of the inter-dealer market be used in the case of issues not included in NASDAQ. The rule change also would amend the footnote to Section A of Part XI of Schedule D to reflect a technical change in the average weekly volume ranking formula. The rule change is intended to conform Schedule D to the requirements for the dissemination of inside quotations contained in Rule 11Ac1-2 under the Act. The provisions of that rule prohibiting the display of representative quotations become effective on July 5, 1980.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No.

[1] On June 14, 1980, the NASD requested that the Commission exempt it from the application of subparagraph (c)(2)(i)(A) of Rule 11Ac1-2 to crossed and locked markets in securities quoted on the NASDAQ System. The Commission today granted the exemption by letter pursuant to the requirements of subparagraph (g) of Rule 11Ac1-2.

34–16812, May 16, 1980) and by publication in the Federal Register (45 FR 34490, May 22, 1980). No comments were received. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and in particular, the requirements of Sections 11A and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20654 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[70-6447; Rel. No. 21651]

Ohio Power Co. and Central Ohio Coal Co. Proposed Transfer of Coal Lands and Related Assets to Coal Mining Subsidiary and Proposed Increase of Return on Prior Investments Therein

July 7, 1980.

Notice is hereby given that Ohio Power Company ("Ohio Power") 301 Cleveland Avenue, S.W., Canton, Ohio, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9 and 10 of the Act and Rule 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Power proposes to transfer certain coal lands, mineral rights, structures and equipment (in which it had a net investment of approximately $30,413,000 as of December 31, 1979), which represent a major portion of the assets associated with the Muskingum Mine, to COCO. Such transfer would be financed partially by long-term interest-bearing notes to be issued by COCO to Ohio Power, and partially by a capital contribution by Ohio Power to COCO. It is also proposed that the rate of return allowed Ohio Power on its prior investment in COCO, which rate is reflected in the price paid by Ohio Power for coal, from COCO, be increased from 6% per annum on the portion of COCO's capital and surplus (including declared but unpaid dividends) which is invested by Ohio Power in COCO, to a rate of 13% per annum on COCO's equity (excluding retained earnings).

COCO was incorporated in the State of Ohio in 1946 for the purpose of conducting surface coal mining operations for Ohio Power. COCO operates the Muskingum Mine, which is located in the Ohio counties of Morgan, Muskingum and Noble, on lands owned or controlled by Ohio Power. COCO supplies coal to Ohio Power pursuant to a contract dated Febraury 15, 1946, which, as amended and supplemented (the "Coal Contract"), gives COCO the exclusive right to mine coal from certain designated lands owned or controlled buy Ohio Power, and provides that COCO shall sell and deliver to Ohio Power, and Ohio Power shall accept and pay for, all of the coal produced by COCO from such lands. The price of the coal sold and delivered under the Coal Contract is an amount equal to the sum of: (a) the entire cost to COCO of mining, preparing and delivering such coal (including carrying charges on the coal lands billed by Ohio Power to COCO); and (b) and additional amount sufficient to give COCO a return (after taxes) of 6% per annum on the portion of its capital and surplus (including declared but unpaid dividends) which is invested by Ohio Power in COCO.

The Muskingum Mine is a large surface coal mine, encompassing more than 150,000 acres, located about 5 miles from Ohio Power's Muskinghum River Generating Station (the "Muskingum River Plant") at its closest point. After cleaning at a preparation plant, coal from the Muskingum Mine is transported to the Muskingum River Plant by an overland conveyor belt system. The amount of recoverable clean coal remaining in the Muskingum Mine is estimated to be approximately 73 million tons. It is anticipated that this coal will be mined at an average annual rate of 2.3 to 2.4 million tons. The Muskingtum River Plant, located on the Muskinghum River near Beverly, Ohio, is a 5-unit coal-fired steam-electric generating plant having a net power capability (winter rating) of 1,375,000 kilowatts.

It is proposed that Ohio Power transfer to COCO (i) all the land, mineral rights, structures and equipment related to the Muskingum Mine which are presently carried on Ohio Power's books and which are the subject of carrying charge billings to COCO, and (ii) the Muskingum Mine preparation plant addition ("Preparation Plant"), a major addition completed on February 4, 1980, to the original coal cleaning plant (included in (i) above) and which is estimated to have a total construction cost of $18,000,000, the Preparation Plant not previously having been the subject of carrying-charge billings to COCO. The following table summarizes the property proposed to be transferred (book value figures as of December 31, 1979, in thousands):

Table

Electric plant in service	Original cost	Accumulated depreciation depletion and amortization	Net book value
(Currently subject to carrying-charge billings)			
Surface lands and coal reserves	$21,931	$8,108	$13,823
Original cleaning plant and related equipment	2,211	613	1,598
Other structures and equipment	1,854	1,047	807
Total	$25,996	$9,768	$16,228
(Not currently subject to carrying-charge billings)			
Construction work in progress Additions to preparation plant facilities, less contract retentions of $272,000	13,798		13,798[1]
Other lands and rights	387		387
Total subject to transfer	$40,181	$9,768	$30,413

[1] Construction of the Preparation Plant improvements was completed on February 4, 1980 at a cost of approximately $18,000,000.

The property to be transferred would be conveyed at Ohio Power's net book value for such assets as of the first day of the month in which the transfer takes place. It is proposed that in exchange for the conveyance of such properties, COCO will issue long-term notes ("Notes") to and obtain capital contributions from Ohio Power in proportions equal to the debt-equity ration of Ohio Power as of December 31, 1979. On such date the capitalization

ratios of Ohio Power were 56.3 percent debt and 43.7 percent preferred and common equity.

It is proposed that the annual interest rate on the Notes shall be equal to the effective interest cost of Ohio Power's most recently issued series of first mortgage bonds, which was its 10¾ percent series due 1989, issued in September 1979, which have an effective cost of 10.75 percent per annum. The Notes to be issued by COCO would mature 30 years from the date of issuance and would be prepayable at any time without penalty.

It is proposed that the return on equity applicable to the capital contributions shall be based on the weighted cost of money of Ohio Power's last issue of preferred stock and the rate of return on common equity determined and allowed by the Federal Energy Regulatory Commission ("FERC") in its most recent wholesale rate proceedings involving Ohio Power. Since there is at present no such applicable FERC order, it is proposed that the cost of common equity capital be set (until there is such an applicable FERC order) at 13 percent, which rate is no more than the level allowed in the most recent order of the Public Utilities Commission of Ohio in retail rate proceedings involving Ohio return on equity applicable to the capital contribution would 12.03 percent, as shown in the following table:

Table

[Percent]

Component	Capitalization ratio	Factor 100	Cost	Weighted cost
Preferred Stock	11.9	27.2	[1]9.46	2 57
Common Equity	31.8	72.8	13.00	9 46
Total	43.7	100.0		12 03

[1]Cost to Ohio Power of its most recent preferred stock issue, its $2.27 series, par value $25, issued in March 1978

It is also proposed that the presently allowed 6 percent rate of return, after taxes, for COCO on its existing common equity (including retained earnings and declared but unpaid dividends) under the Coal Contract be increased to a rate of 13 percent on said common equity (excluding retained earnings and declared but unpaid dividends). Ohio Power and COCO therefore propose to amend the Coal Contract to provide that the price to be paid by Ohio Power for coal delivered thereunder be an amount equal to the sum of: (a) the entire cost of COCO of mining, preparing and delivering such coal; (b) interest on COCO's indebtedness, including the Notes; and (c) an additional amount sufficient to give COCO a return, after taxes, of 13 percent on its common equity prior to the proposed transfer of assets and a return, after taxes, of 12.03 percent on the new capital contributions, both such rates to be adjusted to reflect the return last allowed to Ohio Power by FERC with respect to its common equity in wholesale into proceedings involving Ohio Power, such adjustment to occur on January 1 of the year following the year in which such FERC order is issued. It is stated that until this Commission acts on the instant filing the cost of coal shall include the rate of return currently allowed under the Coal Contract.

It is further stated that it was originally contemplated that the proposed transfer of Ohio Power's investment in the Preparation Plant would be consummated prior to the date of its commercial operation. However, since it was completed and put into operation on February 4, 1980, prior to the date the filing herein was made, Ohio Power has instituted an interim billing procedure to recover its carrying charges associated with such investment. Such billings, which include compensation for the cost of invested capital at a net-of-tax composite rate of 11.31 percent, have been made subject to adjustment or refund, as may be ordered by this Commission.

COCO claims exemption from the competitive bidding requirements of Rule 50 for its issuance of Notes to Ohio Power pursuant to Rule 50(a)(3).

The fees and expenses to be incurred in connection with the proposed transactions will be suplied by amendment. It is stated that no State and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than August 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20133 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16956; File No. SR-NASD-78-3]

Practices in Fixed Price Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of issuance of letter.

SUMMARY: The Commission announced today that it has sent to the National Association of Securities Dealers, Inc. (the "NASD") a letter concerning a proposed rule change filed by the NASD to amend its Rules of Fair Practice governing member practices in fixed price offerings of securities. The letter reflects the Commission's concerns regarding certain aspects of the proposed rule change.

FOR FURTHER INFORMATION CONTACT: Janet R. Zimmer, Esq. (202) 272-2863, Kathleen McGann, Esq. (202) 272-2855, or Lucy A. Weisz, Esq. (202) 272-2840, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of of 1934, the NASD filed a proposed rule change to amend Article III, section 24 (governing selling concessions) and Article III, Section 8 (governing swap transactions) of its Rules of Fair Practice and to add a new Section 36 of Article III (governing recapture of selling concessions) and a new Section 1(m) of Article II to define the term "fixed price offering" (File No. SR-NASD-78-3).[1] The letter sent today

[1]Notice of the proposed rule change was given by Securities Exchange Act Release No. 15020 (August 2, 1978) 43 FR 35446 (August 9, 1978). The Commission issued a subsequent release that solicited additional comment on the issues raised by the proposed rule change and announced public hearings to be held on these issues. Securities

Footnotes continued on next page

by the Commission to the NASD reflects the Commission's comcerns regarding certain aspects of proposed Section 24 and proposed Section 8.

The text of the letter follows:

Mr. Gordon S. Macklin, President,
National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C.

Dear Mr. Macklin: This letter is in reference to a proposed rule change concerning various practices in connection with fixed price offerings of securities (File No. SR–NASD–78–3), filed by the National Association of Securities Dealers, Inc. (the "NASD") on May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act").

Notice of the proposed rule change was given in Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). In May 1979, because of the significance and complexity of the issues raised by the proposed rule change, the Commission solicited additional comments and announced public hearings to be held on these issues. Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). These hearings concluded November 20, 1979, and the comment period expired December 15, 1979.

Presented below are a description of the proposed rule change and a discussion of certain revisions the Commission believes may be necessary or appropriate.

I. Description of the Proposed Rule Change and of the Commission's Review

The proposed rule change would amend Articles II and III of the NASD's Rules of Fair Practice to regulate or prohibit a variety of practices that the NASD believes might be construed as providing a discount from fixed prices in underwritten public offerings. First, the proposed amendments to Article III, Section 8 would impose a more explicit prohibition on a member's taking securities in trade at more than their fair market price. Second, the proposed amendments to Article III, Section 24 would prohibit the granting of selling concessions, discounts, or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business and would permit such payments to be made or received only as consideration for services rendered in distribution. The amendments to Section 24 also would impose a number of related requirements. Third, a new Section 36 of Article III would prohibit an NASD member from selling or placing with any related person of the member securities that are part of a fixed price offering. Fourth, a proposed amendment to Article II of the Rules of Fair Practice would add a new section defining the term "fixed price offering." Finally, as part of the proposed rule change, the Board of Governors of the NASD would append to the amendments to Section 8 and 24, and to the new Section 36, several interpretive statements relating to the meaning and application of those sections.

Pursuant to Section 19(b) of the Act, the Commission has reviewed the proposed rule change and has considered the data, views and arguments that were submitted in the hearings and in written comments received in this proceeding. Section 19(b)(2) provides that, in order to approve the proposed rule change, the Commission must find it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.

In particular, the Commission has reviewed the proposed rule change in light of certain requirements of Section 15A of the Act governing the rules of the NASD. Section 15A(b)(2) requires that the NASD have the capacity to enforce compliance by its members with its rules. Section 15A(b)(6) provides, among other things, that the rules of the NASD must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 15A(b)(6) also provides that NASD rules must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers, to fix minimum profits, or to impose any schedule or fix rates of commissions, allowances, discounts or other fees to be charged by NASD members. In addition, Section 15A(b)(9) provides that the rules of the NASD must not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed below, the Commission is concerned that the NASD Board's interpretations of proposd Section 24, limiting "soft dollar" payments for research, may not be consistent with the requirements of the Act. In addition, the Commission believes that a more flexible definition of "fair market price" in proposed Section 8 may better achieve the intended purposes of that section and Section 24. The balance of this letter describes the Commission's concerns about the proposed rule change and suggests ways in which the NASD could revise its proposal to address these concerns.

II. Proposed Section 24(a)—Soft Dollar Payments for Research

A. *The Proposal as Filed.* Section 24(a), as proposed to be amended, would limit the grant or receipt of discounts in connection with the sale of securities that are part of a fixed price offering. It would provide that a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such selling concessions, discounts, or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business.

The interpretation by the NASD Board of proposed Section 24 would impose limitations that troubled many commentators. First, the Board's interpretation provides that a dealer has rendered "services in distribution" in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. The Board's interpretation does not otherwise specify what would constitute a service in distribution, except that it provides that furnishing a customer with research will not by itself constitute sufficient selling effort to satisfy Section 24; rather, the interpretation states, "some direct selling contact on a particular offering will be necessary." The Commission assumes, as did several of the commentators, that the interpretation requires some direct selling contact with the particular customer on that offering and that a broker-dealer that was not an underwriter would not fulfill the services in distribution requirement if it failed to make such direct contact.

Some commentators have stated that the NASD Board's "services in distribution" interpretation

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Footnotes continued from last page
Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). Sixteen witnesses testified at the hearings and 51 comment letters have been received, including the NASD's most recent submission, "Analysis of The Record Developed In The Matter of Papilsky Hearings From The Perspective of Statutory Authority" (March 3, 1980). All comments and transcripts of the hearings are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The issues associated with the proposed rule change are commonly identified by reference to a judicial decision, *Papilsky v. Berndt* [1976–1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) § 95,627 (S.D.N.Y. 1976).

discriminates unfairly against dealers who are not underwriters and who have not made any selling contact with a customer before being designated by that customer to receive selling concessions, discounts, or other allowances in fixed price offerings on the basis of the research they have furnished to the customer. These commentators argue that research is a fundamental part of the distribution process since institutional investors frequently purchase securities on the basis of research rather than as a result of direct selling contact. They argue, therefore, that research *per se* should be considered a service in distribution.

The second feature of the NASD Board's interpretations of proposed Section 24 that troubled commentators is the interpretation of the phrase "selling concessions, discounts, or other allowances." Essentially, that interpretation provides that an NASD member who (i) supplies another person with services or products that are "commercially available" or are provided by the member to that person or to others for cash or some other agreed upon consideration, and (ii) also retains or receives selling concessions, discounts, or other allowances from that person's purchases in a fixed price offering, would be deemed to be improperly granting a selling concession, discount, or other allowance to that person unless the member were fully compensated for those services or products from sources other than the selling concession, discount, or allowance retained or received on the sale.

The practical effect of this interpretation, as further amplified by the NASD Board, would be generally to permit "soft-dollar" arrangements involving in-house research furnished on a "goodwill" basis to customers who purchase securities in a fixed price offering, while precluding such arrangements involving third-party research that was purchased by a broker-dealer (other than one who was acting as the exclusive distributor of that product or service) and distributed on a "goodwill" basis. In addition, a firm would be precluded from providing any research (including its own in-house research) to one customer for cash, or for brokerage commissions, and to another for soft dollars in connection with a fixed price offering. Although the interpretation would apply to all NASD members, several commentators have asserted that the practical effect of the interpretation would be to discriminate unfairly against, and impose unnecessary burdens on, firms that have limited in-house research capabilities, or that derive a substantial portion of their revenues from research services and cannot afford to provide research on a "goodwill" basis.

In light of the above, the Commission is concerned that the proposed rule change, as filed, may not be consistent with the requirements, in Section 15A(b)(6) and 15(A(b)(9) of the Act, that the rules of the NASD may not unfairly discriminate among brokers or dealers or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. *Alternative Formulations of Section 24.* The NASD stated at the hearings that it would consider modifying the prohibitions that would be imposed by the NASD Board's interpretations of proposed Section 24. The NASD has suggested several areas for possible further inquiry, and raised basically two alternative approaches that could help alleviate the problems that troubled the commentators.[1]

Alternative 1: Under the first alternative: (a) the "services in distribution" interpretation would be revised so that the furnishing of *bona fide* research, defined in a manner similar to the Commission's interpretation under Section 28(e) of the Act,[2] would be deemed to be a sufficient service in distribution; (b) the "commercially available" prohibition that derives from the Board's interpretation would be redefined so as not to apply to such *bona fide* research; and (c) the "agreed upon consideration" limitation that derives from the Board's interpretation would be modified to allow research supplied to one customer for cash or other agreed upon consideration to be made available to another customer on a "goodwill" basis in connection with a fixed price offering.

By including research as a service in distribution, this alternative would permit any broker-dealer, not just a member of the underwriting syndicate, to receive soft dollar designations for research services without having to show that it had engaged in direct selling contact with the customer. The additional revisions would expand the types of research arrangements that would not be considered a discount. Under this approach, the determination as to whether a discount had been granted would depend on the nature of the agreement between the customer and broker-dealer and not on whether the research provided was otherwise commercially available or had a readily ascertainable cash or cash equivalent value.

The Commission recognizes that this alternative has certain advantages over the filed interpretation of proposed Section 24. First, the interpretation embodied in the revised approach may be more easily enforceable since it would not be necessary to determine whether a designated broker-dealer had direct selling contact with a customer or whether "substantially identical" research was being offered by others on a cash or cash equivalent basis. Second, the revised approach would appear to alleviate some potential anticompetitive burdens imposed on firms that distribute purchased "third-party research," as opposed to research generated "in-house", on a "goodwill" basis to customers.

The Commission believes, however, that this alternative, by maintaining the distinction between research provided only for "goodwill" and research provided for cash or other agreed upon consideration may impose undue burdens on firms that cannot afford to provide research solely on a "goodwill" basis. In addition, this approach seems to focus more on appearances than on the economic reality of research arrangements as a means of adjusting the value received by a customer paying the public offering price in a fixed price offering. Whether or not the broker-dealer and its customer have agreed on a specific and identifiable *quid pro quo*, the furnishing of research confers some added value. Accordingly, it may not be appropriate to distinguish, for purposes of defining what constitutes a discount, between arrangements that embody such an explicit understanding and those that do not. Indeed, the Commission is concerned that the drawing of such distinctions, which both the filed interpretation and this alternative would do, would tend to promote artificial compensation arrangements in which all parties know, but never explicitly state, that payment is expected for research services. Finally, the restrictions imposed on research by the first alternative may not be necessary or appropriate in furtherance of the purposes of the Act. For these reasons, the Commission believes that the first alternative suggested by the NASD fails to address adequately the Commission's concerns with regard to the NASD's treatment of research in the proposed rule change, as filed.

Alternative 2: The second alternative suggested by the NASD at the hearings

[1] In the Matter of Papilsky Hearings (Proposed Rule Change by NASD), Securities and Exchange Comm'n File No. 4-282, at 979-82 (November 20, 1979).

[2] Securities Exchange Act Release No. 12251 (March 24, 1976).

would be to treat the provision of *bona fide* research as a sufficient service in distribution, as in the first alternative, but also to place such research in a class by itself so that, unlike other products or services, it could be furnished for soft dollars (even if the consideration were explicitly agreed upon) without being considered to be an improper discount for purposes of Section 24. The record includes several policy arguments for treating research as *sui generis* in this fashion. First, a number of commentators have argued that providing research is a valuable service that constitutes a fundamental part of the distribution process and should, therefore, be protected. Second, several commentators have maintained that soft dollar payments for research have been prevalent for years with no adverse effect on the fixed price underwriting system and that this practice does not give rise to the abuses that proposed Section 24 is designed to prevent. The NASD itself suggested at the hearings that none of the restrictions on *bona fide* research in the proposed Section 24 as filed or in the first alternative are essential to the operation of a fixed price offering.

This second, more liberal alternative appears to eliminate most effectively any potentially unfair discrimination between firms that produce extensive in-house research for distribution to their customers and other firms (including a number of smaller and regional firms having limited in-house research capabilities, or none at all) that provide their customers with research produced by third parties. In addition, the Commission believes the second alternative most clearly and honestly expresses the economic realities of current research compensation practices, which appear to have existed for some time now without any demonstrated harm to the underwriting system. The Commission believes, therefore, that the second alternative is better designed than the first alternative or the proposal as filed to carry out the purposes under the Act that the proposed rule change is intended to promote.

III. Proposed Section 8—Swaps

Proposed Section 8 of Article III is another area of the proposed rule change the Commission believes the NASD should be re-examined. Section 8 is intended to prohibit overtrading in swap transactions that are effected in connection with fixed price offerings and would require members to purchase securities taken in trade at their "fair market price." As filed, proposed Section 8 defines "fair market price" to mean a price not higher than the lowest independent offer for the securities at the time of purchase. In effect, proposed Section 8 would establish the lowest independent offer as a point below which a swap transaction could not, under any circumstances, be deemed to violate the rule.

The Commission is concerned that, as the NASD stated at the hearings, proposed Section 8 would sometimes permit the acceptance of swapped securities at a price in excess of their actual fair market value. For example, since propose Section 8 does not required that the lowest independent offer be determined with reference to the size of a transaction, it would permit a block of securities, including debt securities, to be purchased at a price equal to that offered for a much smaller quantity even though the block might otherwise trade at a discount. In addition, since most dealers usually buy at their bids and not at their offers, the Commission, is concerned that, regardless of the size of the transaction, a dealer's purchase of securities at the lowest offer could, in many instances, constitute an overtrade when compared to the dealer's normal pattern of trading.

Even if permissible under proposed Section 8, the acceptance of swapped securities at a price in excess of that a dealer would pay in the absence of the customer's purchase of underwritten securities in a fixed price offering has the effect of reducing or even eliminating the dealer's selling concession and, accordingly, could be considered to confer a discount prohibited under proposed Section 24. The Commission is concerned that this result could be confusing to NASD members and, in fact, may be contrary to the purposes of the proposed rule change. The Commission, therefore, requests the NASD to re-examine proposed Section 8 with a view toward reconciling the apparent inconsistencies between that section and propose Section 24.

The Commission is aware that, in certain instances, it may be difficult to determine precisely the fair market price of securities taken in trade and that, therefore, there may be advantages in having objective criteria to aid in this determination. The Commission believes, however, that any objective standard selected should be designed to account for the size of a transaction and to prohibit a broker-dealer from accepting swapped securities at a price in excess of what it would pay for the same amount of securities in a transaction having similar characteristics but not involving a fixed price offering. The Commission is concerned that the formulation of propose Section 8, as filed, may not achieve this goal and encourages the NASD to re-evaluate that section to determine how best to arrive at the desired result.

One possible approach would be to eliminate the safe harbor provisions for transactions at or below the lowest independent offer and, instead, to use the lowest offer as a guideline rather than a fixed standard for determining whether a trade has taken place at the fair market price. Under such an approach, a transaction occurring at or below the lowest independent offer would be presumed to have taken place at the fair market price (although the NASD would be able to rebut that presumption), while a transaction above the lowest independent offer would place the burden upon the member to justify the higher price. This approach would allow the NASD to take into account the size of the particular transaction, the member's pattern of trading and other relevant circumstances in determining whether an overtrade had occurred.

Another approach might be to select a standard other than the lowest independent offer that more closely approximates the price at which dealers generally purchase securities, *i.e.*, at the bid. Such an approach would provide a safe harbor only for those transactions occurring below the highest independent bid for the securities. In evaluating this approach, the NASD should consider how it could account for the size of particular transactions.

The Commission encourages the NASD to consider the two approaches suggested above, as well as others, in an effort to develop an alternative formulation of Section 8 that addresses the Commission's concerns. The NASD's formulation should, of course, take into account all relevant aspects of normal swapping practices. For example, the NASD should clarify how the fair market price test would be applied in circumstances where the terms of a swap transaction were agreed upon at a time other than the time of purchase of the underwritten securities. The Commission also believes that the NASD's examination procedures to detect prohibited overtrades should be designed with this and the Commission's other concerns in mind.

IV. Conclusion

The NASD, at the hearings, has already indicated its willingness to re-examine the aspects of the proposed rule change discussed above and to consider revising the proposal

accordingly. The Commission hopes that, after considereing the Commission's concerns, the NASD will file an amended rule change proposal that responds to the concerns addressed above. Of course, the Commission would not be able to reach a final determination to approve the proposed rule change as so amended until notice of amendments had been published and the Commission had given full consideration to any comments received in response to that notice.

The Commission wishes to thank the NASD for its continued cooperation throughout these proceedings and looks forward to a prompt resolution of this matter.

By the Commission, (Chairman Williams, Commissioners Loomis and Friedman), Commissioner Evans dissenting.

George A. Fitzsimmons,

Secretary.

July 3, 1980

[FR Doc. 80-20657 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1866]

North Dakota; Declaration of Disaster Loan Area

All counties within the State of North Dakota constitute a disaster area as a result of drought conditions caused by natural disasters beginning in the Fall of 1979 through May 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 5, 1981, and for economic injury until the close on April 3, 1981, at: Small Business Administration, Distict Office, 657 2nd Avenue, North, Room 218, P.O. Box 3086, Fargo, North Dakota 58108, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 3, 1980.

A Vernon Weaver,

Administrator.

[FR Doc. 80-20773 Filed 7-10-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 81 (Rev. 10), Amdt. 6]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority of the Commissioner of Internal Revenue to approve Schedule A (5 CFR 213.3102(u)) appointments for the severely physically handicapped; and, to approve extension of details beyond 120 days is delegated to subordinate officials. The text of the delegation order appears below.

EFFECTIVE DATE: July 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Philip P. Russo, Internal Revenue Building, Room 3316, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566-3161 (not toll free).

This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive which appeared in the Federal Register for Wednesday, November 8, 1978.

D. S. Burckman,

Director, Personnel Division.

Date of issue: July 7, 1980.

Effective date: July 22, 1980.

Authority To Approve Extension of Details Beyond 120 Days and To Approve Appointment of Severely Physically Handicapped

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 177-19 (Revision No. 1) and the Office of Personnel Management to approve the extension of details beyond 120 days, and to approve the appointment of the severely physically handicapped is delegated as specified herein:

The Director, Personnel Division is authorized to detail employees to higher grade positions for up to one year during major reorganizations. This authority may not be redelegated.

The Regional Commissioner and the Director, National Office Resources Management Division are authorized to:

1. Approve extensions of details beyond 120 days to same or lower grade positions in 120-day increments for up to one year, and up to 240 days for details to higher grade positions which are not during major reorganizations;

2. Approve the appointment of severely physically handicapped persons (Schedule A) under 5 CFR 213.3102(u).

The authority cited in 1. and 2. may be redelegated no lower than the Chief, Personnel Branch and the Chief, National Office Personnel Branch.

The authority to extend employee details to unclassified positions beyond 120 days is not granted by this Delegation Order. Such extensions require OPM approval.

This Amendment supplements Chart 2 and Chart 6 of Attachment B to Delegation Order No. 81 (Rev. 10), issued April 16, 1979, which is printed in the Federal Register dated April 9, 1979, Vol. 44, Number 69, Pages 21110–21133; and supersedes Delegation Order No. 81 (Rev. 10), Amend. 1, issued April 30, 1979.

William E. Williams,

Acting Commissioner.

FR Doc. 80-20777 Filed 7-10-80; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 11 (Rev. 12)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The authority of the Commissioner of Internal Revenue to accept or reject offers in compromise is redelegated as set forth in the text of the delegation order which appears below.

EFFECTIVE DATE: July 7, 1980.

FURTHER INFORMATION CONTACT: Mr. Fidelio Calderon, 1111 Constitution Ave. NW., Room 7539 CP:C:O, Washington, D.C. 20224, (202) 566–4471 (not toll free).

This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive which appeared in the Federal Register for Wednesday, November 8, 1978.

J. R. Starkey,

Director, Collection Division.

Date of issue: July 7, 1980.

Effective Date: July 7, 1980.

Authority To Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order Nos. 150–25 and 150–36, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Department Order No. 150–60, is hereby delegated as follows:

1. Regional Commissioners of Internal Revenue are delegated authority, under section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. This authority may not be redelegated.

2. For the Office of International Operations, the Assistant Commissioner (Compliance) is delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise of tax, based solely on doubt as to liability, in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may not be redelegated.

3. For the Office of International Operations, the Director, Collection Division is delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise based on boubt as to collectibility and those based on doubt as to both collectibility and liability in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, and firearms taxes. This authority may not be redelegated.

4. District Directors, Assistant District Directors, the Director of International Operations and the Assistant Director of International Operations, Regional Directors of Appeals, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, penalty, additional amount or addition to tax) is less than $100,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated to District Directors, Assistant District Directors and the Director of International Operations may not be redelegated, except that that authority to reject offers in compromise may by redelegated, but not lower than to Division Chief. The District Director in a streamlined district may not redelegate this authority. The Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority.

5. Service Center Directors and Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, in cases in which the unpaid liability is less than $100,000, and to reject offers in compromise, limited to

penalties, regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated, but not lower than to Division Chief.

6. This Order supersedes Delegation Order No. 11 (Rev. 11) issued August 23, 1979.

William E. Williams,

Acting Commissioner.

[FR Doc. 80-20776 Filed 7-10-80; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-25]

Consolidated Rail Corp.; Application for a Loan

Subsection (h) of section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of section 211 requires that the Association publish notice of the receipt of any application thereunder in the Federal Register and afford interested parties an opportunity to comment thereon.

Conrail submitted a Borrowing Application dated July 3, 1980 requesting new borrowings of $6,871,975.00. Conrail states that it will use the funds to pay the following obligations: (1) Of the Penn Central Transportation Company, nonemployee injury claims of $3,400,000.00, and (2) of the Erie Lackawanna Railway Company, claims of suppliers of goods and services of $622,030.00, claims of railroads of $2,550,000.00, and claims for nonemployee injuries of $299,945.00. The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, on or before July 18, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C. this 7th day of July 1980.

David Kleyps,

Assistant Secretary, United States Railway Association.

[FR Doc. 80-20665 Filed 7-10-80; 8:45 am]

BILLING CODE 8240-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on July 31, 1980, at 1:00 PM, the Veterans Administration Medical and Regional Office Center, Cheyenne, Wyoming Station Committee on Educational Allowances shall at the hearing room., Building 4, Veterans Administration Medical and Regional Office Center, Cheyenne, Wyoming conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in National Outdoor Leadership School, Lander, Wyoming should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: July 3, 1980.

John D. Graveley,

Acting Director, Veterans Administration Medical and Regional Office Center

[FR Doc. 80-20658 Filed 7-10-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 135
Friday, July 11, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-284, Amdt. 3, July 8, 1980]

CIVIL AERONAUTICS BOARD.

(Notice of deletions from the July 8, 1980 board meeting)

TIME AND DATE: 9:30 a.m., July 8, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

5. Docket 37021, Objection of ATC to the findings and conclusions of Show Cause Order 79-11-20 wherein the Board tenatively concluded that the provisions of previously approved agreements permitting non-member participation in the Area Settlement Plan that require removal of individual ticket stock may be adverse to the public interest and should be disapproved (memo No. 7750-F, BDA).

26. Docket 36280, Belize Airways Limited. Application for renewal of foreign air carrier permit (BIA, OGC, BALJ, BCP).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1334-80 Filed 7-9-80; 3:00 pm]

BILLING CODE 6320-01-M

2

[M-284, Amdt. 2; July 7, 1980]

CIVIL AERONAUTICS BOARD.

(Short Notice of Addition and Deletion of Items to the July 8, 1980 Board Meeting)

TIME AND DATE: 9:30 a.m., July 8, 1980.

PLACE: Room 1027 (open), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Addition: 11a. Dockets 38392 and 38401, Aspen Airways' notice and exemption request to terminate all service at Bakersfield, California, on July 13, 1980, before the end of the 90-day notice period (BDA).

Deletion: 27. Docket 30789, *Transatlantic Cargo Service Case*—Draft opinion and order on discretionary review (OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1335-80 Filed 7-9-80; 3:01 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, July 15, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules to alter Exchange methods for imposing price limits.

Application of the New York Futures Exchange for designation as a contract market in Twenty-year Treasury Bonds and Ninety-day Treasury Bills.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1327-80 Filed 7-9-80; 9:37 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Tuesday, July 15, 1980.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters—proposed offer of settlement and proposed administrative complaint.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1328-80 Filed 7-9-80; 9:38 am]

BILLING CODE 6351-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

July 8, 1980.

TIME AND DATE: 10 a.m., July 9, 1980.

PLACE: Room 9306, 825 North Capital Street, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Disposition by the Agency of two particular cases of Formal Agency Adjudication.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

The following members of the Commission voted that agency business required the holding of a closed meeting on less than the one week's notice required by the Government in the Sunshine Act:

Chairman Curtis.
Commissioner Sheldon.
Commissioner Holden.
Commissioner Hall.

Kenneth F. Plumb,
Secretary.

[S-1326-80 Filed 7-9-80; 9:00 am]

BILLING CODE 6450-85-M

6

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, FR p. 45754, July 7, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 am., July 9, 1980.

PLACE: 1700 G Street NW., amphitheater, second floor,
Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Regulation on Increase in Number of Federal Home Loan Bank Directorships.

Regulation on Amendments Regarding Maximum Interest Rates and Penalty for Early Withdrawal.

Announcement is being made at the earliest practicable time.

No. 365, July 9, 1980.

[S-1329-80 Filed 7-9-80; 10:21 am]

BILLING CODE 6320-01-M

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., July 16, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Agreement No. 10178–1: Modification of the Gulf/North Europe Discussion Agreement—Application for two-year extension of term of approval.
3. Evaluation of Bunker Surcharge Program in domestic offshore trades.
4. Petition of Totem Ocean Trailer Express, Inc. concerning the status of certain joint through transportation between the contiguous United States and Alaska.
5. Award of interest in reparation proceedings.
6. Informal Docket No. 724(I): Cotton Import and Export Co. v. Sea-Land Service, Inc.—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1336–80 Filed 7–9–80; 3:32 pm]

BILLING CODE 6730–01–M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2 p.m., July 14, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Internal Processing of matters for Commission consideration.
2. Docket No. 77–13: First International Development Corporation v. Ships Overseas Services, Inc.—Consideration of the record.
3. Docket No. 77–23: In the Matter of Agreement No. 10294—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–1337–80 Filed 7–9–80; 3:33 pm]

BILLING CODE 6730–01–M

9

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, July 17, 1980.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Policy Review Session: Selected Procedural and Evidentiary Issues in Rulemaking.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523–3830; recorded message: (202) 523–3806.

[S–1333–80 Filed 7–9–80; 2:37 pm]

BILLING CODE 6750–01–M

10

NUCLEAR REGULATORY COMMISSION.

DATE: Tuesday, July 15, 1980.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

10 a.m.

1. Briefing on Analysis of Alternatives for Conducting Independent Verification Testing of Environmentally Qualified Equipment (approximately 2 hours, public meeting).

2 p.m.

1. Briefing on Mid-Year Review of Financial Plans and Programs (approximately 1½ hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,
Office of the Secretary.
July 8, 1980.

[S–1331–80 Filed 7–9–80; 1:43 pm]

BILLING CODE 7590–01–M

11

POSTAL RATE COMMISSION.

TIME AND DATE: 8:15 a.m., Thursday, July 10, 1980.

PLACE: Conference room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Consideration of Draft Order Taking Notice of the United States Postal Service's Failure to Comply with a Lawful Order of the Commission.
Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268; telephone (202) 254–5614.

[S–1332–80 Filed 7–9–80; 2:56 pm]

BILLING CODE 7715–01–M

12

POSTAL SERVICE.

Board of Governors Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Thursday, July 17, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting will be closed to the public. The Board expects to discuss the Postal Rate Commission's April 8, 1980, Recommended Decision upon Reconsideration of the Electronic Mail Classification Proposal, 1978 (Commission Docket No. MC78–3). This is the only item on the Agenda for this meeting. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On June 30, 1980, the Board of Governors voted to close the July 17 meeting to the public observation. Each of the members of the Board voted in favor of closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Counsel to the Governors Califano; and Secretary of the Board Cox.

Louis A. Cox,
Secretary.

[S–1330–80 Filed 7–9–80; 11:23 am]

BILLING CODE 7710–12–M

Federal Register

Friday
July 11, 1980

Part II

Department of Labor

Mine Safety and Health Administration

Mine Rescue Teams; Minimum Requirements

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 49

Mine Rescue Teams

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule requires the availability of mine rescue teams for all underground mines in the event of an emergency and is promulgated under the authority of sections 101 and 115(e) of the Federal Mine Safety and Health Act of 1977. The new standard establishes minimum requirements for mine rescue teams in the following areas: Team size and availability; rescue equipment, storage and maintenance; rescue notification plans; and team member experience, health, and training. The regulations also provide for alternative mine rescue capability for mines which are "small and remote" or those which have "special mining conditions."

EFFECTIVE DATE: These regulations shall be effective on July 11, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, Room 717, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-8646 or Herschel Potter, Chief, Division of Safety, Coal Mine Safety and Health, Mine Safety and Health Administration, Room 617, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1284.

EFFECT ON EXISTING REGULATIONS: A new Part 49 is established by this rule which provides for the availability of mine rescue teams at all underground mines and sets forth minimum requirements for such teams. Presently, mine rescue regulations exist for metal and nonmetallic underground mines at 30 CFR 57.4-67, 57.4-69, and 57.4-70. To avoid duplication and inconsistency with this new rule, the existing regulations will be revoked upon the effective date of these regulations.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977 (Act), Pub. L. 91-173 as amended by Pub. L. 95-164, applies to all coal, metal and nonmetal mines. In section 115(e) of the Act Congress required that:

> * * * the Secretary shall publish proposed regulations which shall provide that mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. The costs of making advance arrangements for such teams shall be borne by the operator of each such mine.

In compliance with Executive Order 12044 concerning improvement of government regulations and Department of Labor guidelines implementing the Executive Order (43 FR 22915), a draft of the proposed rule was made available for public comment prior to its publication in the Federal Register. Comments were received, given full consideration, and discussed in the proposed rule for mine rescue teams published (44 FR 1536, January 5, 1979) in accordance with section 101 of the Act, 30 U.S.C. 811. Interested persons were afforded 60 days to submit comments to the published proposed rule and to request a public hearing.

On May 22, 1979, MSHA published a Notice of Public Hearing which set forth the issues raised in response to the publication of the proposed rule, and identified the dates, time, and locations for six public hearings (44 FR 29692, May 22, 1979). During June and July of 1979, hearings were held in Charleston, West Virginia; Salt Lake City, Utah; Pittsburgh, Pennsylvania; Birmingham, Alabama; Pikeville, Kentucky; and St. Louis, Missouri. Transcripts of the proceedings were taken and made available for public inspection. Following the public hearings, interested persons were allowed until July 27, 1979, to submit supplementary statements or data. During this rulemaking process the Mine Safety and Health Administration (MSHA) has received and reviewed hundreds of written comments and statements from interested persons.

II. Discussion and Summary of the Final Rule

A. General Discussion

The legislative history for section 115(e) indicates that Congress considered the ready availability of a mine rescue capability in the event of an accident to be a vital protection to miners. Congress was concerned that, too often in the past, rescue efforts at a disaster site have had to await the delayed presence of a skilled but distant mine rescue team. In responding to the direction of Congress, the rulemaking process addressed, and the final rule reflects, the three essential elements of effective mine rescue by providing for: (1) The ready availability of teams to each underground mine; (2) requirements assuring that those teams be properly equipped; and (3) provisions establishing basic levels of skill and training for the team members.

MSHA's intent in promulgating this regulation has been to establish minimum requirements designed to assure that mine rescue teams shall be available for rescue and recovery work to each underground mine in the event of an emergency. MSHA recognizes that in many sectors of the mining industry rescue teams have been developed on a voluntary basis. This regulation is not intended to alter this traditional industry response. Based upon MSHA's experience in mine rescue matters, these regulations set forth only those requirements considered to be basic minimums. The history and tradition of mine rescue provides ample support for the expectation that many mines and teams will voluntarily exceed the minimum requirements of this regulation.

The thrust of a majority of the comments was for a more flexible final rule to better address the diversity of underground mining conditions, hazards, and operations. Many other comments suggested changes which were designed to simplify and clarify language of the proposed rule. In response, MSHA has made numerous changes to the standard as originally proposed to increase operator flexibility, simplify and clarify language, and delete unnecessary requirements.

MSHA has made a significant modification to the proposed rule in response to commenters who supported a provision to permit alternative mine rescue capability in limited instances. The MSHA notice of public hearing expressly solicited additional input on this issue (44 FR 29694, May 22, 1979). The final rule adds a new section (49.4) permitting alternative mine rescue capability for mines with "special mining conditions," while retaining the proposed rule section allowing alternative mine rescue capability for "small and remote mines". This new section for special mining conditions is based upon a recognition that certain underground mining operations present a significantly lower risk to the safety of underground miners. Operators who can establish the presence of the low-risk conditions are permitted to devise an alternative plan which assures a suitable rescue capability to that which would otherwise be required by the standard.

Other examples of flexibility are evident in the final rule's reduction of the length of recordkeeping periods for team training and physical examinations from two years to one, reduction of the required number of alternate team members from two to one; the waiver of the experience requirement and initial

training for individuals presently serving on a mine rescue team; and the enlargement of the pool of otherwise qualified individuals to serve on mine rescue teams through reduction of the underground experience requirements.

B. Section by Section Analysis of Final Rule

§ 49.1 Purpose and scope

This section explains that Part 49 implements the requirements of section 115(e) of the Federal Mine Safety and Health Act of 1977 (Act). Under section 115(e), Congress required that the Secretary publish regulations to provide for the availability of operator funded mine rescue teams for rescue and recovery work to each underground mine in the event of an emergency.

Commenters questioned whether the proposed regulations exceeded the legislative intent of section 115(e) of the Act that rescue teams be "available" by detailing minimum requirements for the size, training, equipment and health of the mine rescue teams.

All commenters recognized the inherently hazardous nature of mine rescue and recovery work and the need for professionalism in its performance. To assure effective and meaningful implementation of the statutory requirements, the regulation must establish minimum criteria so that those teams which present themselves in an emergency are fully capable of performing the rescue work. This goal is best achieved by requiring that the team members who are available in the event of an emergency be physically fit, properly trained, and appropriately equipped.

It should also be noted that the standards contained within Part 49 were also proposed pursuant to the Secretary's rulemaking and recordkeeping authority as provided for in sections 101, 103(h), and 508 of the Act. This authority allows the Secretary to promulgate improved mandatory health and safety standards for the protection of life and prevention of injuries in mines. Except for editorial changes designed to simplify and clarify, this section is promulgated as stated in the proposed rule.

§ 49.2 Availability of mine rescue teams

The proposed section provided that within six months after its effective date, or thereafter prior to the opening of any new mine, the operator of each underground mine have at least two mine rescue teams available at each underground mine for rescue and recovery work. This requirement could be satisfied through the use of a cooperative agreement or other contractual arrangement. The proposal also permitted operators of small and remote mines to submit alternative plans to MSHA as a means of achieving full compliance with the standard.

In the final rule, this section has been revised and reorganized. First, in direct response to the comments, MSHA has expanded the criteria for alternative compliance to include certain mines with "special mining conditions" as well as those considered "small and remote". These provisions for alternative compliance are contained in §§ 49.3 and 49.4 of the final rule. Section 49.2 as it appears in the final rule addresses the number of teams required, number of team members, experience requirements for team members (previously in § 49.6 of the proposal), and the definition of the term "available" as used in this standard. The effective date of the final rule is discussed in new § 49.10.

The purpose of these regulations is to assure that underground mine operators have properly trained and equipped personnel who are able to respond within a reasonable time in the event of an emergency. Commenters requested a definition of "available." To assure consistent application of the regulations, MSHA agrees that such a definition is necessary. Several commenters were concerned that this rule would result in a "fire department" approach to mine rescue work, requiring full time employees whose exclusive duties would be devoted to emergency readiness or other related activities. This is not MSHA's intention. In the final rule "available" has been defined to require that trained and equipped mine rescue teams be capable of presenting themselves at the mine site within a reasonable time after notification of an occurence which might require the services of a mine rescue team. This definition also provides that personnel will be considered available even though performing other regular work duties or in an off-duty capacity. Some comments expressed concern that the availability requirements in this rule would prevent teams from participating in mine rescue team contests or providing rescue services to another mine. Teams which are actually engaged in rescue operations cannot be expected to be "available" to perform rescue services elsewhere during those operations, and the availability requirement does not apply in such circumstances. In addition, in view of the important part that mine rescue contests play in the development of mine rescue skills and capabilities, mine rescue teams will not be required to be available while participating in these contests. However, mine operators should make every effort to assure that, during periods when regular mine rescue services are unavailable due to those circumstances, mine rescue capability can be provided as rapidly as possible in the event of an emergency. For example, it is recommended that MSHA District Manager be notified during such periods to assure expeditious coordination of mine rescue services should an emergency arise.

The final rule also provides that no mine served by a mine rescue team shall be located more than two hours ground travel time from the mine rescue station with which the rescue team is associated. This is a change from the proposed rule which limited the location of the rescue station to 60 minutes ground travel time from the mine(s) served by the rescue station. MSHA expanded the time associated with the location of a mine rescue station to account for differences in terrain.

Commenters stated that, with respect to the rescue team requirement for new mines, MSHA should clarify the meaning of the phrase "prior to the opening of a new mine." MSHA agrees that the phrase needed clarification. Accordingly, more explicit language has been used. The final rule requires a mine rescue capability for "all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing mine". This means that such a capability will be necessary at currently operating underground mining operations, upon initial excavation of a shaft or slope mine and the first cut for a drift mine.

Comments also stated that during the construction phase of the mine, independent contractors, and not the owner, lessee or other person who would operate, control or supervise the mine, should be responsible for providing the mine rescue capability. On this issue, MSHA's position is that it is essential to maintain an effective continuity of rescue capability during the construction and early production phases of the mining operation. Therefore, the operator who is an owner, lessee, or other person who operates, controls or supervises a mine should be responsible for complying with the requirements of this rule. In many instances, the number of independent contractors at the mine during this period will be too numerous, and their duration too indefinite, to provide an effective continuous rescue capability.

Comments questioned the necessity in the proposed requirements for two separate rescue teams with each having two alternate members. On this subject, public comment varied greatly. Several comments agreed that two teams would provide adequate service, others stated that two teams were excessive, while still others stated that three teams would be appropriate. In addition, commenters took the position that one alternate member for each team would be sufficient. In an attempt to maximize operator flexibility, and to reconcile current industry practice and varying State law requirements, MSHA has retained the two-team requirement. However, the final rule is changed to require one alternate member per team. MSHA's experience has shown that the two-team concept has been historically effective and has offered reliable rescue capability. Commenters also suggested that one alternate per team would provide sufficient back-up protection for the rescue team. MSHA agrees and believes that changing the rule to require only one alternate per team will provide operators with more flexibility in forming teams without jeopardizing the assurance of adequate mine rescue services.

Comments stated that the use of contractual and cooperative agreements could result in legal difficulties which might hinder the effectiveness of a mine rescue organization. They stated that formal contractual agreements should not be required, suggesting instead the use of verbal agreements and/or declarations to assist. Other comments stated that operators need only provide evidence of the agreement, rather than the agreement itself. These commenters noted the tradition of voluntary mine rescue work and stated that, even in the event of a contractual or cooperative agreement, team members could not be compelled to respond to an emergency. In using the term "contractual or cooperative agreements" in the proposed rule, MSHA did not intend to create or imply a legal obligation or guarantee on the part of the organization providing rescue services to actually send team members underground in any particular situation. The agency also did not intend that any such agreements warranty that "satisfactory results" be achieved once underground, or that persons be otherwise held accountable for specific conduct when in mine emergency situations. This concept is not changed in the final standard. The law and these regulations provide only that properly equipped and trained teams be available. Accordingly, MSHA seeks written evidence that an arrangement exists for mine rescue teams to appear at a mine during an emergency. Once the mine rescue teams are at the mine, these rules do not attempt to control the decisions that are made or the result achieved. Unless otherwise prescribed by the standard, the actual details of any arrangements such as logistics, cost or other matters are freely negotiable between the parties and need not necessarily be in writing. All operators who choose cooperative or other arrangements as a method of assuring rescue capability should do so with the full understanding of the voluntary nature of mine rescue work. The history of mining disasters reveals that if the lives of miners or other persons were threatened, mine rescue teams have always responded without hesitation. MSHA respects this tradition and expects that this type of response will continue.

Some commenters discussed the extent to which State teams could be used to help provide the mine rescue capability. They noted that in some instances, the State is only responsible for furnishing the equipment and training, while team members are actually employees of the mine operator. MSHA understands this, and to maximize the availability of mine rescue services, such arrangements will be permitted. Therefore, State teams can be used to satisfy the requirements of this rule, as long as such teams are trained and equipped according to the requirements of this rule.

With respect to the experience necessary for membership on a rescue team, the proposed rule contained a provision that all members and alternates shall have been employed in an underground mine for a total of at least one year within the three years prior to becoming a team member. In addition, surface miners who worked regularly underground would be considered employed in an underground mine. Commenters stated that these requirements were too restrictive, particularly for small mines and new mines. Specifically, operators of small mines stated that they would be unable to find sufficient personnel to meet the one year experience requirement. They noted that the limitation on experience to either underground work only or surface miners regularly working underground would preclude many qualified, specially skilled employees, such as electricians and hoist operators, from becoming team members. Therefore, although the final rule retains a requirement for one year of underground experience as a prerequisite to being eligible for mine rescue work, it has been changed so that the one year's experience requirement can be satisfied if it has occurred within the five years prior to becoming a team member. MSHA believes that this change will allow operators more flexibility in recruiting members, while at the same time assuring that only persons sufficiently familiar with underground work will serve on mine rescue teams.

The proposed provision allowing surface miners whose work regularly takes them underground to be considered qualified for team membership has been retained. This should enlarge the pool of potential mine rescue team members. With respect to the issue of surface miners qualifying for underground experience, some commenters urged MSHA to clarify that this would be solely for the purpose of determining eligibility for mine rescue teams. The final rule makes this clarifying change. With respect to the inability of small operators to recruit members, new § 49.3 allows operators of small and remote mines to submit plans for alternative compliance.

Many commenters stated that there should be a "grandfather clause" which would permit persons who are currently on mine rescue teams to be exempt from the one year experience requirement. MSHA agrees. The final rule has been changed to reflect a waiver of the one year underground experience requirement for miners who are on a rescue team on the effective date of this rule.

This section also requires that each operator of an underground mine shall provide MSHA with a statement describing the mine's method of compliance with this Part. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services are to be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. At mines where a miners' representative has been designated, the operator is also required to provide a copy of the statement to the miners' representative.

§ 49.3 Alternative mine rescue capability for small and remote mines.

Section 49.2(b) of the proposed rule provided that operators of small and remote mines could submit alternative plans for assuring a mine rescue capability. In the final rule, MSHA has expanded this provision and included it in a new section. The final rule also contains specific factors which will be

considered by MSHA District Managers in approving alternative plans for operators of small and remote mines.

The intent of this section of the final rule is to establish the best possible rescue response available under the circumstances which is appropriate to the underground mining conditions at each mine. Although small and remote mines are not statistically less hazardous than larger or non-remote mines, small and remote mines are distinguished by their size and location which may effectively limit the operator's ability to establish and equip two full mine rescue teams.

In the final rule, MSHA retained the alternative plan provision for small and remote mines because of a recognition that underground mines which are both small and remote face unique problems in providing for the availability of mine rescue teams. Some commenters stated that to increase flexibility in providing mine rescue capability, the term "small and remote" should be changed to "small and/or remote". According to these commenters, the presence of either characteristic should allow operators to establish an alternative plan. However, it is MSHA's opinion that smallness or remoteness alone should not be a sufficient criterion for permitting alternative rescue capability since such mines would be capable of establishing mine rescue teams. For example, small mines which are located close to either an established mine rescue team and station or to other underground mines could join in a cooperative arrangement to provide rescue services. In addition, remotely located mines which are not small are capable of establishing their own teams.

Many of the comments on the proposed rule urged MSHA to define the terms "small and remote." In the notice of public hearing, MSHA agreed that the terms needed defining and encouraged testimony on this issue (44 FR 29694). In defining the terms for the final rule, MSHA has determined that to be considered small and remote, the total underground employment of the operator's mine at any surrounding mine(s) within two hours ground travel time of the operator's mine must be less than 36. Under the definition, the number of miners employed on each shift in a multi-shift mine will be added together to derive at total.

The definition for the term "small and remote" applies only to this Part 49. These definitions are not intended to apply to or be a source of interpretational guidance where the terms "small" or "remote" appear in other sections of the Act, Code of Federal Regulations, or MSHA publications.

Comments relative to the number of miners employed at small and remote mines varied, ranging from mines employing as few as 20 persons underground to those employing as many as 75. In determining a specific underground employment figure for a small and remote mine, MSHA evaluated the record and found public testimony very helpful in delineating some of the difficulties which would be encountered by operators of small and remote mines in attempting to develop their own mine rescue teams. For example, based upon the comments and MSHA's own experience, in a typical small and remote mine, there will be a number of miners who: will not meet the experience and physical requirements in this rule; would not be amenable to volunteer rescue work; would be in administrative or management positions which may prevent them from serving on teams; or might have personal or family reasons which would preclude them from team membership. In addition, the mines within this category might be subject to high labor turnover and limited labor supply because of their isolated location or the nature of mining techniques being used. If any of these conditions are present, an already limited pool will be reduced. It is important to note that MSHA recognizes that these mine operators may have the same safety risk as large mines. In deciding on a definition for small and remote mines, MSHA felt that because of the administrative and other limitations which might be placed upon the applicant pool in these mines, it would be necessary to have a pool of at least three times the size of the 12 person general requirement from which to draw qualified members. MSHA believes that where the underground employment of the operator's mine and the underground employment of mines within two hours ground travel time of the operator's mine total less than 36, it could be very difficult to establish two, six-person teams.

A critical element in determining whether a mine is small and remote is the proximity of other underground mines or existing rescue teams and stations. MSHA solicited testimony on the remoteness issue. A commenter suggested that a mine which is located more than 100 miles from a mine with a mine rescue team or some other mine rescue capability should be considered remote. In using two hours ground travel time as the radius to determine remoteness, MSHA's definition is consistent with the comment. In instances where a small mine is found to be clustered within two hours ground travel time of other small mines, those mines will be able to jointly develop their own teams where their total underground employment equals or exceeds 36.

Where an operator has a mine which is unable to qualify for "small and remote," but because of unique circumstances can not meet the specific requirements of § 49.2 (availability of mine rescue teams), the MSHA District Manager should be notified immediately. The agency will then review the individual situation of the mine with the operator and a representative of the miners (if one has been designated). On a case by case basis, MSHA will seek to tailor appropriate remedies for such uniquely situated mines.

Some commenters raised an issue with respect to the role of MSHA teams in assisting operators to satisfy their obligations under this rule. Although MSHA does have personnel trained in mine rescue, their role is to provide support to MSHA at the scene of a mine emergency. This role is consistent with the language of section 103(j) of the Act, which allows the Secretary, in his discretion, to take appropriate action in the supervision and direction of rescue and recovery activities. This role for MSHA is also consistent with the express language of section 115(e), which requires that the operator bear the responsibility and costs for making advance arrangements to provide for mine rescue teams.

Underground mines which can qualify within the defined class as being both small and remote may submit an application for alternative mine rescue capability to the MSHA District Manager for the district in which the mine is located, for review and approval. No special form is required for submission of an application under this section.

The items of information required to be submitted in the application under this section are designed to disclose the particular characteristics of the small and remote mine seeking alternative compliance. With this information the operator of the underground mine, the miners, and MSHA can work together to formulate an appropriate rescue capability within the guidelines set forth in the section. Generally, this process will entail a look at the type of operation involved, an analysis as to the practicality and usefulness of taking intermediate steps to protect lives until fully trained and equipped teams can arrive, and an individual review to determine the best possible rescue

capability the applicant mine can develop.

The final rule requires several pieces of information from the applicant operator; each element is important to building an essential data base for the District Manager's evaluation of the operator's application for alternative compliance. The application is required to contain statements as to: the number of miners employed underground at the mine on each shift; the distances from the two nearest mine rescue stations; the total underground employment of mines within two hours ground travel time of the operator's mine; the mine's fire, ground, and roof control history; the mine's established escape and evacuation plan, an evaluation by the operator of the usefulness of additional refuge chambers to supplement those which may exist; the number of medically qualified and experienced miners willing to volunteer for mine rescue team service; the operator's alternative plan for assuring a suitable mine rescue capability; and other relevant information about the underground mine which may be requested by the District Manager.

Disclosure of the number of miners employed underground at the mine on each shift provides critical demographic information about the underground workforce. As the underground employment of the operator's mine and the underground employment of mines within two hours ground travel time of the operator's mine approaches 36, the operator's ability to develop an optimum rescue capability should improve.

The information on the distances from the two nearest mine rescue stations is required to identify the locations of the closest rescue stations. MSHA stands ready to assist operators in identifying mines and mine rescue teams and stations which are located near them. Paragraph (c)(4) requires inclusion of the mine's fire, ground, and roof control history in the application. MSHA is aware that 30 CFR Part 50, dealing with accidents, injuries, illnesses, employment and production in coal, metal, and nonmetallic mines, may already provide some of the information required in this section of the application. Duplication of effort is not intended. In satisfying this requirement, the operator may provide copies of accident reports relating to fire, explosion, and ground or roof control incidents at the mine. The operator may also summarize the findings of reports already filed. The intent is to review these aspects of the mine's history as part of the process of developing a suitable rescue capability.

The purpose of requiring the operator to submit an established escape and evacuation plan, with an evaluation of the usefulness of providing additonal refuge chambers, is to provide an opportunity to review whether possible improvements in these areas could enhance the chances of survival for miners until trained and equipped teams can arrive. MSHA recognizes that an escape and evacuation plan is already required under 30 CFR 57.11–53 and 75.1101–23. To avoid duplication, the applicant need only reference the date of the current plan where the District Manager is in possession of a current copy. Although escape and evacuation plans are reviewed under the regulations referred to above, this supplemental review of the plans may generate ideas for additional protection of miners trapped in small and remote mines until complete rescue services can arrive. MSHA is also aware that existing regulations for refuge chambers are contained in 30 CFR 57.11–50, 57.11–52, and 75.1500. The inclusion of this and other information in the application is not meant to suggest that changes will necessarily be mandated. The purpose is to allow a proper assessment of the individual circumstances of the small and remote mine, as was advocated by a considerable number of commenters.

The application also requires the operator to state the number of medically qualified and experienced miners at the mine who are willing to volunteer for mine rescue teams. In some instances the pool of qualified volunteers may be sufficient to establish one or two teams, or to establish teams with less than the full complement of members, which could perform rescue and recovery work until reserve assistance arrives.

Upon examining the particular characteristics of the underground mine, the operator is required to devise a suitable mine rescue capability. As stated earlier, the objective to be attained is the establishment of the best possible rescue capability available under the circumstances, which is also appropriate to the underground mining conditions at the applicant mine. MSHA stands ready to assist operators in this task. After a review of the submitted plan, the District Manager may request other relevant information about the operator's mine.

The completed application is to be posted at the mine. Where a miners' representative has been designated, the operator is also required to provide the representative with a copy of the application. Congress intended that miners be afforded a more active role in matters of direct concern to their safety and health, and their experience and knowledge of the mine make them an ideal resource in the development of the alternative mine rescue capability. In determining whether to approve the operator's alternative plan, the District Manager will consider comments submitted by, or on behalf of, any affected miner. In addition, the District Manager will evaluate the individual circumstances of the small and remote mine and make a determination as to whether the alternative mine rescue plan provides a suitable rescue capability in light of the information contained in the application.

The final rule requires the approved plan to be adopted by the operator and a copy of the plan posted at the mine for the miners' information. Where a miners' representative has been designated, the operator is also required to provide the representative with a copy of the approved plan. Appropriate MSHA mine emergency telephone numbers are to be included in each approved plan.

The operator has a duty under this provision to notify MSHA of material changes in the information submitted in the application. For example, if the underground workforce within the two hour ground travel time expands beyond the definition of small and remote, or if closer mine rescue teams become available, the operator's ability to provide a mine rescue capability will have materially changed. Paragraph (h) of this section provides that an approved plan for alternative mine rescue capability can be revoked by MSHA for cause, when it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. No revocation of an approved plan will occur until after the operator has had an opportunity to be heard before the appropriate District Manager. Where an application is denied, or an approved plan is revoked, the District Manager will provide the reason for such action in writing to the operator. The operator may appeal the decision of the District Manager by writing to the Administrator for Coal Mine Safety and Health or Metal and Nonmetal Safety and Health, as appropriate.

§ 49.4 Alternative mine rescue capability for special mining conditions.

This is a new section. It provides that operators of mines with special conditions can submit alternative plans for assuring a mine rescue capability. This section also sets forth specific criteria which will be used by MSHA District Managers in approving such plans. The new section was added in

response to the great number of comments suggesting that the rule reflect greater flexibility to accommodate the diversity of underground mining conditions. Applications to provide alternative mine rescue capability from operators of mines with special mining conditions are to be submitted to the appropriate MSHA District Manager for review and approval. No special form is required for submission of an application under this section.

At the initial stage of the rulemaking process, comments to a draft of the proposed rule suggested that the criteria for an alternative plan should be expanded beyond the proposed rule's provision for small and remote underground mines. These comments were reflected in the proposed rule and MSHA specifically solicited comments on this issue in both the proposed rule and notice of hearings (44 FR 1536, January 5, 1979; 44 FR 29694, May 22, 1979). Many commenters stated that certain mining conditions and situations present a significantly lower risk of entrapment in an emergency to underground miners which would justify an alternative to the mine rescue team requirements contained in the proposed rule. To allow for maximum flexibility in the implementation of this rule for all segments of the mining industry, MSHA has included such a provision in the final rule.

Comment and testimony from the mining industry was widespread relative to the types of mining conditions and situations which might warrant alternative mine rescue capability. A history of mining disasters reveals that in most instances they are caused by mine fires or explosions. With this in mind, MSHA requires that operators demonstrate that certain conditions are present in the mine before alternative compliance can be considered under this section. Each of the conditions relate to factors tending to either: Reduce the likelihood of the occurrence of a hazard requiring the use of a mine rescue team; increase the likelihood that individuals will be able to effectuate self escape; or assure that conventional surface rescue services will be adequate. These conditions are also reflective of the differences in types of minerals being mined and the manner in which they are mined. Specifically, the mine must have (1) multiple adits or entries; (2) a noncombustible substance and nonexplosive atmosphere; (3) multiple vehicular openings to all active mine areas sufficient to allow fire or rescue vehicles full access to all parts of the mine in which miners work or travel; (4) roadways or other openings which are not supported or lined with combustible materials; (5) no history of flammable gas emission or accumulation, and the mined substance shall not have a history of flammable or toxic gas problems; (6) plugged any reported gas or oil well or exploratory drill hole to within 100 feet above and below the horizon of the ore body or seam.

If these conditions are present, the mine would generally be easily accessible and present a lower risk of the occurrence of a hazard related to gaseous substances, fires and explosions and to entrapment, poor ventilation, and roof falls. These conditions would also tend to facilitate self-escape. A survey of mines with these conditions reveals that the most common types of situations requiring emergency assistance are minor roof falls, equipment fires and vehicular accidents which can effectively be handled by conventional surface methods. MSHA believes that under these circumstances, alternative compliance might be justified.

Each application for alternative compliance under this section shall contain: A detailed explanation of the special mining conditions; the number of miners employed underground at the mine on each shift; the distances from the two nearest mine rescue stations; the operator's mine fire history; the operator's established escape and evacuation plan; the operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and other relevant information about the underground mine which may be requested by the District Manager. With this information, the operator of the underground mine, the miners, and MSHA can work together to develop an appropriate rescue capability within the guidelines of this section.

It is important to note that mines which can qualify under this section can be distinguished from other underground mines in that they may present a significantly lower risk to miners of entrapment in an emergency. Although many commenters urged MSHA to include this provision for lower risk underground mines, they all agreed that even where special mining conditions exist, some rescue capability is needed to assure adequate protection for miners. In the notice of public hearing, MSHA solicited comment with respect to the alternative methods which would be used by operators of mines with special mining conditions to assure the availability of rescue services. Based upon the comments and MSHA's own experience, alternative methods of compliance might include the availability of: Local fire departments, rescue squads, ambulances, trained rescue personnel, or other rescue services. In addition, the operator is required to provide MSHA with the mine's escape and evacuation plan. However, to avoid duplication, operators who have filed current plans with MSHA (in accordance with 30 CFR 57.11-53 and 75.1101-23) need only cite the date the plan was submitted.

MSHA believes that this new provision is directly responsive to the comments stating that certain underground mining conditions do not require the type of mine rescue services set forth in § 49.2. MSHA believes that the approach adopted in this section will allow operators of mines with special mining conditions the flexibility needed to develop a rescue capability most appropriate for their mines, and at the same time, provide adequate rescue protection for workers in these mines.

New paragraph (e) of this section provides that a copy of the operator's application for alternative compliance must be posted at the mine and, where a miners' representative has been designated, provided to the representative. As mentioned in the discussion of small and remote mines, MSHA believes that because of the increased role granted miners in matters affecting their safety and health by the 1977 Act, they should be provided an opportunity to review the operator's application for alternative compliance. In making their decisions, MSHA District Managers would then be able to consider any pertinent information submitted by miners or their representatives. The District Manager's decision to approve an application will be based upon a evaluation of the data presented by the operator, the operator's proposed alternative plan, and other relevant information coming to the District Manager's attention. The District Manager will use this information to determine whether the alternative plan provides a suitable rescue capability which is appropriate to the individual characteristics of the mine and its workforce.

New paragraph (h) requires that an operator shall keep MSHA apprised of all changes related to information included in his application. Paragraph (i) provides that the appropriate MSHA District Manager may deny an application for alternative compliance under certain circumstances. This paragraph further provides for the

revocation of an approved plan if MSHA receives pertinent new information or determines that condition or factor has changed which would alter the operator's mine rescue capability. No revocation of an approved plan will occur until after the operator has had an opportunity to be heard before the appropriate District Manager. Where an application is denied, or an approved plan is revoked, the District Manager will provide the reason for such action in writing to the operator. The operator may appeal the decision of the District Manager by writing to the Administrator for Coal Mine Safety and Health or Metal and Nonmetal Safety and Health, as appropriate.

§ 49.5 Mine rescue station.

This section provides that each operator of an underground mine must designate in advance the location of the mine rescue station serving the underground mine, unless alternative mine rescue capability is permitted under §§ 49.3 or 49.4. In response to the comments, the final rule for this section reflects changes designed to allow greater flexibility in the concept of an acceptable mine rescue station.

Under the proposed rule a provision for a mine rescue station appeared in § 49.8. The proposed rule envisioned a facility which would be adequate in size to conduct classes, and be equipped with hot and cold running water, illumination, heating devices and telephone. The station was to be located not more than 60 minutes ground travel time from the mines served by it, although an exception existed for remotely located mines. The proposed rule also would have required that rescue stations be offset from mine openings to protect them from explosion, while a separate subsection asserted the Secretary's right to inspect the stations.

The final rule alters many of the provisions of the proposed rule, while retaining its basic concept. The primary purpose of the mine rescue station is to provide a safe and readily available place of storage for the equipment used by mine rescue teams in the event of an emergency. Under the final rule, equipment may be stored in a free standing mine rescue station, at the mine site, or at an affiliated mine. Any of these storage sites may be designated as the mine rescue station. The essential feature of the station is that it be a central repository for the storage of critical equipment which provides a proper storage environment. This concept is extremely important and necessary to avoid the possible delay and confusion which could result if equipment were to be stored in several different locations. In keeping with the primary purpose of a mine rescue station, MSHA agrees with the comments that the rescue station need not also be a classroom facility. MSHA also wishes to clarify that the final rule does not require that the rescue station be a facility which is staffed on a 24-hour-a-day basis.

The proposed rule contained requirements that the rescue station be provided with hot and cold running water, illumination, and heating devices; each utility serving a specific safety-related function: Water, to allow for equipment cleaning; illumination for visibility; and heating devices to protect the equipment from damage due to low temperatures. However, MSHA agrees with the comments stating that these utilities need not necessarily be present in rescue stations to achieve the goal of a proper storage environment for the ready use of emergency equipment. Cleaning, which may be necessary to keep equipment in good working order, need not be performed at the rescue station. Illumination, while necessary, may be provided from natural or mobile sources. Heating devices may not be needed in some climates. While conditions and climates will vary, it is important in all instances that the rescue equipment be appropriately protected and serviced. Flexibility in providing for a proper storage environment has been attained with the final rule's general requirement in § 49.6(b) (Equipment and maintenance) that mine rescue equipment be properly stored and maintained in a manner which will assure readiness for immediate use. Therefore, the mandatory inclusion of specific utilities has been deleted from the final rule. Proper storage and equipment readiness may require that mine rescue stations be offset from any mine openings where the risk of damage from explosion exists.

The purpose of the proposed rule's requirement for a telephone in the mine rescue station was to provide a means for notifying a mine rescue team of an emergency. This was deleted since the mine emergency notification plan (required under § 49.9 of the final rule) already covers this subject.

Finally, the proposed rule's express statement of the right of the Secretary's authorized representatives to inspect the designated mine rescue station is retained as part of the Secretary's general authority to inspect under section 103(a)(4) of the Federal Mine Safety and Health Act of 1977. Inspection is essential to properly evaluate compliance with this rule.

§ 49.6 Equipment and maintenance requirements.

Under the proposed rule, the required equipment for mine rescue teams and stations and the maintenance of that equipment were treated separately under §§ 49.3 and 49.4. In the final rule, these closely related subjects have been consolidated into one section.

The proposed rule provided that certain enumerated pieces of equipment were to be stored at a mine rescue station. Under the final rule the broadening of the definition of a mine rescue station allows equipment to be stored in a centralized location which may be at the mine site, mine rescue station, or at an affiliated mine. The purpose of this requirement is to assure that rescue efforts not be delayed as a result of equipment being stored in several different locations. The specific centralized location should be known to all who use it.

Under the final rule, certain paragraphs contained in proposed § 49.3 (equipment and maintenance) were retained completely, while other paragraphs were modified, reduced, or deleted. The proposed rule's requirements for at least six self-contained oxygen breathing apparatus per team with a minimum of two hours capacity each and equipment to test such apparatus were retained completely, and appear under § 49.6(a)(1) of the final rule. The proposed rule also required that each mine rescue station be equipped with either two oxygen indicators or two flame safety lamps, and with a portable mine rescue communication system. The final rule retains each of those equipment requirements. The vast majority of the commenters expressed agreement with MSHA as to the need for each of these items of rescue equipment.

Several modifications of equipment requirements were made in the final rule. The proposed rule provided that each mine rescue team be equipped with seven permissible cap lamps and a charging rack. The final rule requires six cap lamps to be consistent with the reduction in § 49.2(b) from two alternate rescue team members to one for each team. MSHA recognizes that cap lamps are already required under 30 CFR 57.17-10 and 30 CFR 75.1719-4. Duplication is not intended and the intent of retaining this requirement is to assure that a sufficient number of charged cap lamps are present to support a team arriving for an emergency. Where it can be demonstrated that the mines served by a rescue team already have the required

extra charged cap lamps, MSHA will not separately require additional cap lamps.

Sections § 49.3(b) (1) and (2) of the proposed rule set forth a specific list of required gas detectors. Commenters to these paragraphs felt that some types of underground mines would not need each of the specified detectors. MSHA agrees, and accordingly the final rule has been changed to provide in § 49.6(a)(6) that each mine or mine rescue station shall be equipped with two gas detectors which are appropriate for each type of gas which may be encountered at the mine(s) served. This modification allows greater flexibility to accommodate the diversity of underground mining conditions. The intention is to require gas detectors which are appropriate for the type and location of underground mine involved. Two factors would determine the "appropriate" detectors: one, gases commonly associated with the mined substance, such as methane in coal and salt mines; and two, gases that have been detected at a particular mine, even if that gas is not usually associated with the mined substance. Common experience will supply the answer in most instances. For example, all "gassy" mines need methane detectors, and all mines would require CO detectors as that gas would be present where any mine fire was involved.

Section 49.3(b)(4) of the proposed rule would have required an oxygen pump suitable to the type of breathing apparatus used by the rescue teams. Commenters submitted that a less costly "cascade system" could also be employed for recharging oxygen bottles in some instances. MSHA agrees that a cascade system is a feasible alternative to an oxygen pump where the pressure of the bottles to be charged does not exceed 2400 psi. The final rule permits cascading as an alternative where that method is compatible with the breathing apparatus used. Cascading is not considered to be a compatible alternative where it cannot fully recharge the apparatus used; in those instances the oxygen pump will be required.

The proposed rule's provision for a portable supply of air or oxygen in § 49.3(b)(5) was retained with one minor modification and appears in § 49.6(a)(2) of the final rule. The modification clarifies that the portable supply may not only be of liquid air, liquid oxygen, or pressurized oxygen, but also may be a supply of O_2 generating or CO_2 absorbing chemicals. The supply must be sufficient to sustain each team for six hours while using the breathing apparatus during rescue operations.

Section 49.6(a)(9) of the final rule modifies the proposed rule by requiring only "necessary" spare parts and tools for repairing the breathing apparatus and communication system. Commenters expressed concern that the proposed rule's requirement for a "supply" of spare parts was too vague. Mine rescue teams may look to the manufacturer's recommendations as a guideline for determining the necessary spare parts and tools.

Section 49.3(a)(2) of the proposed rule would have required one extra oxygen bottle for each self-contained compressed oxygen breathing apparatus. MSHA agrees with the comments that it is unnecessary to require more than one extra fully charged oxygen bottle for each six apparatus. Other equipment requirements contained in this section adequately assure sufficient additional oxygen supplies and the units of the alternate team members are ample to provide adequate reserve protection should a malfunction occur. Accordingly, the final rule reduces this requirement to one extra fully charged oxygen bottle for every six self-contained breathing apparatus.

Several items of equipment contained in the proposed rule were deleted from the final rule. The proposed rule's requirement for self-rescuers was deleted since existing standards require the devices and because they are designed for evacuation use only, not entry. Similarly, the proposed rule's requirements for a stretcher, blanket, and first aid kit were deleted as they are presently covered under 30 CFR 57.15-1 and 30 CFR 75.1713-7. The proposed rule also set out a brief list of required team tools and marking accessories. The final rule deletes those items. It is expected that teams will exercise their best judgment with regard to the acquisition of individual tools and marking accessories considered as necessary and appropriate to the conduct of proper mine rescue operations.

The final rule deletes the proposed rule's requirement for a self-contained oxygen resuscitator. While the device is of value in certain situations, it could not be used in the contaminated atmosphere likely to exist in a mine rescue setting. However, when rescued personnel are brought to the fresh air base, oxygen resuscitating capability would be provided from sources already available, such as extra apparatus or the unused capacity of devices worn by rescue team members.

Section 49.3(c) of the proposed rule required operators to establish, in advance, a transportation plan to get the rescue teams to mines serviced. The final rule retains this requirement, but it has been transferred to § 49.2(d).

Section 49.4 of the proposed rule, dealing with the maintenance of mine rescue apparatus and equipment, was consolidated into § 49.6(b) of the final rule. This paragraph requires that the rescue apparatus and equipment be stored and maintained in a manner which assures readiness for immediate use. It also requires that a trained person inspect and test the equipment at least every 30 days and maintain a record of the inspection and testing dates. In order to avoid unnecessary and burdensome record keeping requirements MSHA has reduced the required record keeping time for this paragraph from two years to one.

§ 49.7 Physical requirements for mine rescue team.

This section requires physical examinations for mine rescue team members. Prospective members are to be examined within 60 days of starting initial training, while current team members are to receive an annual physical examination. The standard by which a physician is to evaluate a person's ability to serve on a mine rescue team is whether the person is physically fit to perform mine rescue and recovery work for polonged periods under strenuous conditions. The final rule provides that the certifying physical examination shall be recorded on MSHA form 5000-3, and kept on file at either the mine or mine rescue station. This form, which has been in use for some time as a voluntary submission, has been revised in accordance with the requirements of this section.

In a further effort to provide flexibility for operators, the final rule expands the time period for the initial examination from 30 to 60 days. It also will permit team members who require corrective eyeglasses to serve, provided the eyeglasses can be worn securely within an approved facepiece. Contact lenses will not be permitted, since there is evidence that they may become lodged above the eye due to pressure in the facepiece of approved breathing apparatus. This could be harmful to the wearer and also pose a hazard to other persons under emergency conditions.

Under the proposed rule certain enumerated medical conditions would have precluded an individual from serving as a team member. These conditions included: seizure disorder; perforated eardrum; hearing loss; high blood pressure; impaired vision; heart disease; hernia; major back surgery; absence of a limb or hand. Although the final rule retains all of the listed conditions except major back surgery,

the presence of any condition does not automatically disqualify a miner from team service. Major back surgery was deleted as a condition of consideration because of the wide variations in this condition, and the likelihood of complete rehabilitation. The final rule requires only that the examining physician consider the conditions in determining whether the individual is capable of performing mine rescue work. This change in the final rule reflects MSHA's agreement with the comments received that the ultimate decision for determining physical qualification for mine rescue team service should rest with the examining physician.

§ 49.8 Requirements for training of mine rescue teams; instructors, and records of training.

The proposed section provided minimum training requirements for team members and alternates, the methods for approving instructors, and recordkeeping requirements.

The purpose of this section is to assure that mine rescue teams will be properly trained in all phases of mine rescue work, including all conditions that might be encountered in the event of an actual emergency. Generally, commenters recognized and supported the need for training, but questioned MSHA's proposed method for attaining this need.

The most frequently raised criticism of this section was that the training requirements were excessive, duplicative of MSHA's Part 48 training regulations, and would result in unnecessary recordkeeping and paperwork. In addition, comments stated that the regulation should include a provision waiving the requirement for initial training for those individuals who currently are on rescue teams and hold MSHA or state certification in rescue training. Commenters also stated that the required hours would necessitate shift splitting and that only initial and refresher training was needed.

The final rule retains the initial training requirement but provides for a waiver of the requirement for those miners who are presently on a mine rescue team. Such persons would already be familiar with the use, care and maintenance of the selected breathing apparatus. Although comments questioned the amount of time required for the initial training, the 20 hours proposed by MSHA remains in the final rule. Based upon its experience in teaching the initial training course and reviewing existing course material, MSHA believes that this is the minimum amount of time in which new rescue team members can become sufficiently familiar with the use, care, and maintenance of selected mine rescue breathing apparatus. It should be noted that MSHA considers the specified amount of training to be minimum requirements; operators are free to provide more if they find it necessary.

The proposed requirement for a separate advance mine rescue training course has been deleted. However, the substance of such a course has been included as a part of the annual refresher training. Comments stated that MSHA's initial and advance mine rescue courses should be published to allow for adequate public input. At this time, MSHA is in the process of developing these courses, and when they are available, MSHA will solicit public input.

There were many comments related to the particular types of training required. Several commenters questioned the duration and frequency of the annual refresher training. In the final rule MSHA has modified the annual refresher training requirement to allow the operator more flexibility in determining both the types and schedule of training best suited for the team members. Commenters objected to the 10-hour separate course in the use, care, capabilities and limitations of auxiliary mine rescue equipment and stated that this training should be given as a part of the initial or advanced training. In support of their argument, they stated that the time required for this training would vary, due to differences in types and quantities of auxiliary equipment. MSHA agrees that this training can be integrated into other training and therefore, the 10-hour separate course for auxiliary equipment has been deleted. The operator can provide the amount of training which he deems sufficient as a part of the annual refresher training. In addition, it should be noted that training in the use, care, capabilities and limitations of auxiliary mine rescue equipment is only necessary if the mine rescue team uses auxiliary equipment. Some comments requested a definition of auxiliary equipment. "Auxiliary equipment," is defined in 30 CFR Part 11.3 as:

> a self-contained breathing apparatus, the use of which is limited in underground mine rescue and recovery operations to situations where the wearer has ready access to fresh air and at least one crew equipped with approved self-contained breathing apparatus of 2 hours or longer rating, is in reserve at a fresh-air base.

Therefore, self-contained breathing apparatus with a rating of one hour or less would come under this definition.

Although MSHA has not reduced the amount of refresher training required, the final rule does permit, as mentioned earlier, training in advanced mine rescue procedures to be given as a part of the annual refresher training, instead of as a separate course. MSHA believes that since the advanced training is of the "practice" type and deals more with procedures to be used once the team goes underground in an actual emergency, it will be more appropriate if given with the the refresher training. In addition, this will allow the operator greater flexibility in scheduling training and more opportunity to develop a program to meet its individual needs.

Commenters suggested that it was unnecessary to require training to be rotated among the mines served by the team, stating that this would be disruptive; and, in the case of a cooperative arrangement, team members providing assistance to another mine would be accompanied by one or more persons familiar with that mine. MSHA agrees and believes that it is only necessary that team members be familiar with underground mining conditions. Training and practice in one's own mine will satisfy this requirement; therefore, the rotation provision has been deleted from the final rule.

Commenters stated that it would be impractical to require that all team members be totally familiar with mine ventilation, escape routes and refuge chambers of the mines served by the rescue team. Instead, they suggested that mine map training and training in the basic principles of mine ventilation would be sufficient. These comments stated that normally, in the event of an actual emergency, there are persons on the team who do have total familiarity with escape routes and mine ventilation. In addition, in the event of an emergency at a mine which participates in a cooperative arrangement, there will be persons at that mine who are totally familiar with escape routes and mine ventilation. Because of this, MSHA believes that a general familiarity by team members with mine map reading and ventilation procedures will be sufficient to permit them to perform adequately in that portion of the mine to which they are assigned. The final rule has been changed to reflect this concept.

Commenters stated that the requirement for cardiopulmonary resuscitation training (CPR) should be eliminated, since it would be most difficult if not impossible in a mine rescue situation to administer CPR, and to do so could be hazardous to miners and the rescue team personnel. Other comments supported some form of CPR training; from total training but not

certification for all team members, to only requiring CPR for the team member who is going to be stationed at the fresh air base. MSHA recognizes the difficulties which could be associated with the use of CPR in a mine rescue situation. MSHA has decided that it is not appropriate to require CPR in these regulations at this time. This requirement has been deleted in the final rule. However, MSHA will continue to explore the important issue of how best to assure that adequate emergency medical services are available at mines.

An issue was raised concerning the requirement in the proposed rule for first aid training. Comments stated that it was duplicative of MSHA's training regulations (30 CFR Part 48), since this training is currently required for all underground miners under those regulations. MSHA agrees. MSHA believes any resulting problems in this area of training can best be addressed on a mine-by-mine basis. Therefore, the requirement for first aid training is deleted in the final rule.

Commenters stated that the proposed provision requiring that the Training Center Chief be notified of the schedule for training was overly restrictive. They stated that this would be administratively burdensome since it would be extremely difficult for operators to pinpoint exactly when training might be given. In support of this, they stated that such factors as team member absences due to vacations and illnesses, equipment malfunctions, production slow downs, and other daily problems would affect the scheduling of training. MSHA agrees that it is important to maintain a flexible approach to training in order that it might be offered at particularly appropriate times to be of maximum benefit. It is, therefore, unnecessary to submit the schedule on an ongoing basis. However, in order to permit training center personnel to monitor all training classes, the final rule states that operators must provide MSHA, upon request, the schedule of upcoming training sessions.

Commenters suggested that instructors should have underground experience, but not experience in actual mine rescue work. Others stated that both underground experience and experience in mine rescue operations are necessary. It is generally recognized that mine rescue work is extremely complex and dangerous and that much of the responsibility for training team members in the correct procedures to be used while undergoing rescue operations rests with the rescue instructors. MSHA believes that because mine rescue training is geared to the hazards encountered in underground mines, for maximum effectiveness, instructors should have a minimum of one year's underground experience within the past five years. However, MSHA realizes that there may be persons, who by virtue of their special skills and training, are qualified to teach in their respective fields of expertise even if they have had no experience in mine rescue work. Where instructors are designated by MSHA, this underground experience requirement may be waived. A commenter also suggested that there should be a provision allowing current mine rescue instructors to be grandfathered. MSHA agrees.

To maximize the use of mine rescue instructor resources and to best utilize specially skilled persons, MSHA does not believe that instructors need actual experience in mine rescue work. The final rule is changed to require instructors to have underground experience. The final rule permits instructors to be approved by one of three methods: (1) Complete a program of instruction by the Office of Education and Training, MSHA; (2) Be designated by the Office of Education and Training, MSHA, based upon their qualifications and teaching experience; or (3) Be designated by the Office of Education and Training, MSHA, if they had been approved instructors prior to the effective date of this rule and had taught courses within the 24 months prior to the effective date. The latter method allows for the grandfathering of current mine rescue instructors. The final rule also provides that the Chief of the Training Center may revoke an instructor's approval for good cause. Under the rule, instructors are entitled to a written statement of reasons for the intended revocation and an opportunity to appeal the decision of the Training Center Chief to the Director of Education and Training.

Commenters stated that the provision requiring that records of training be kept on file at the mine for two years was unnecessary and overly burdensome. They stated that the inspector would be able to check the records as a part of his annual inspections and that it was unnecessary to keep such records beyond a year. MSHA agrees and this requirement has been reduced to one year in the final rule.

§ 49.9 Emergency notification plan and mine map.

This section requires each mine to have a plan of procedures for notifying the mine rescue teams in the event of an emergency. The notification plan is to be located at the mine office and a copy of the plan posted at the mine for the miners' information. This section also requires that a current map of the underground mine be readily available at the mine.

Proposed rule provisions that the agreement for the services of the mine rescue teams be posted, and that the notification plan be set out on an MSHA supplied form have been deleted from the final rule. The posting of the notification plan, as distinguished from the agreement, provides the essential information for affected parties. MSHA has determined that a special form for disclosing the plan is not necessary.

The proposed rule's provisions that mine maps be posted at the mine rescue station and updated every six months or whenever significant changes occurred have also been deleted. MSHA has determined that the existing regulations requiring mine maps, as found in 30 CFR 57.11-53 and 30 CFR 75.1200, are sufficient to satisfy the needs of rescue teams arriving at a mine in the event of an emergency.

§ 49.10 Effective date.

All provisions and requirements of this Part shall become effective on July 11, 1981. The proposed rule provided for a six month delayed effective date; however, comments stated that this was not enough time to allow operators or purchase necessary equipment, train team members and make necessary cooperative or other arrangements.

MSHA has conducted a preliminary survey of equipment manufacturers and has been informed that it will take approximately one year to manufacture enough equipment to satisfy the requirements of the rule. In addition, comments stated that it would be very difficult, in many instances, to recruit and train members for rescue teams within the six month time frame. Therefore, in response to public comment and the agency's own investigation, MSHA has included a delayed effective date of one year in the final rule. This will provide operators with sufficient time to comply with all of the requirements of the standard.

At the time of the effective date of these regulations, operators of underground mines will be required to have developed and have in place the rescue capability required under this Part 49. Team members are to be equipped and have completed the initial training course. Operators applying for alternative mine rescue capability under §§ 49.3 and 49.4 must have their plans approved and rescue capability in place and operational by the effective date of this rule.

In the Notice of Public Hearing, MSHA solicited comments as to potential duplication or inconsistency of regulatory requirements, created by this Part 49 and existing metal and nonmetal mine rescue standards. After reviewing these standards MSHA has determined that the metal and nonmetal mine rescue standards at 30 CFR 57.4–67, 57.4–69, and 57.4–70 are to be revoked effective on July 11, 1981.

Drafting Information

The principal persons responsible for preparing this final rule are: Patricia W. Silvey, Office of Standards, Regulations and Variances, Mine Safety and Health Administration; and William B. Moran, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Regulatory Analysis

It has been determined that a regulatory analysis is not required for this rule under the Department of Labor's final guidelines for implementing Executive Order 12044 (44 FR 5570, January 26, 1979). It is estimated that the first year costs for compliance with this rule will be approximately $38.1 million. This amount is based upon a projected need of approximately 800 additional mine rescue teams and 350 additional mine rescue stations in the coal industry and 90 additional teams and 50 additional stations in the metal and nonmetal industry, at a cost of approximately $28,500 per team and $16,000 per station. MSHA has reduced the costs which were associated with mine rescue stations in the proposed rule, since the final rule expands the definition of a mine rescue station to include less costly options. MSHA anticipates that operators will utilize those options for about half of the additional stations required. The total includes an estimated $300,000 for administrative and recordkeeping costs, and $6 million for costs related to alternative compliance. MSHA projects that the recurring costs of compliance will be approximately $6.5 million annually, since many of the first year costs represent one time capital outlays. MSHA has prepared an economic analysis of the requirements of this rule, with a full discussion of costs associated with each major acceptable alternative, which is available upon request.

Dated: July 3, 1980.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

1. A new Part 49 is added to Subchapter H, Chapter I Title 30, Code of Federal Regulations, as set forth below:

PART 49—MINE RESCUE TEAMS

Sec.

Authority: Sec. 101, 103(h), 115(e) and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173, as amended by Pub. L. 95–164).

§ 49.1 Purpose and scope.

This Part implements the provisions of Section 115(e) of the Federal Mine Safety and Health Act of 1977. Every operator of an underground mine shall assure the availability of mine rescue capability for purposes of emergency rescue and recovery.

§ 49.2 Availability of mine rescue teams.

(a) Except where alternative compliance is permitted for small and remote mines (§ 49.3) or those mines operating under special mining conditions (§ 49.4), every operator of an underground mine shall:

(1) Establish at least two mine rescue teams which are available at all times when miners are underground; or

(2) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(b) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service.

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year within the past five years. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

(d) Each operator shall arrange, in advance, ground transportation for rescue teams and equipment to the mine or mines served.

(e) Upon the effective date of this Part, the required rescue capability shall be present at all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing underground mine.

(f) Except where alternative compliance is permitted under § 49.3 or § 49.4, no mine served by a mine rescue team shall be located more than two hours ground travel time from the mine rescue station with which the rescue team is associated.

(g) As used in this part, mine rescue teams shall be considered available where teams are capable presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.

(h) Each operator of an underground mine who provides rescue teams under this section shall send the District Manager a statement describing the mine's method of compliance with this part. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services shall be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the statement.

§ 49.3 Alternative mine rescue capability for small and remote mines.

(a) If an underground mine is small and remote, an operator may provide for an alternative mine rescue capability. For the purposes of this part only, consideration for small and remote shall be given where the total underground employment of the operator's mine and any surrounding mine(s) within two hours ground travel time of the operator's mine is less than 36.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in

which the mine is located for review and approval.

(c) Each application for an alternative mine rescue capability shall contain:

(1) The number of miners employed underground at the mine on each shift;

(2) The distances from the two nearest mine rescue stations;

(3) The total underground employment of mines within two hours ground travel time of the operator's mine;

(4) The operator's mine fire, ground, and roof control history;

(5) The operator's established escape and evacuation plan;

(6) A statement by the operator evaluating the usefulness of additional refuge chambers to supplement those which may exist;

(7) A statement by the operator as to the number of miners willing to serve on a mine rescue team;

(8) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(9) Other relevant information about the operator's mine which may be requested by the District Manager.

(d) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(e) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the small and remote mine;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(f) Where alternative compliance is approved by MSHA, the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the approved plan.

(g) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(h) (1) An approved plan for alternative mine rescue capability shall be subject to revocation or modification for cause by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified, and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 49.4 Alternative mine rescue capability for special mining conditions.

(a) If an underground mine is operating under special mining conditions, the operator may provide an alternative mine rescue capability.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in which the mine is located for review and approval.

(c) To be considered "operating under special mining conditions," the operator must show that all of the following conditions are present:

(1) The mine has multiple adits or entries;

(2) The mined substance is noncombustible and the mining atmosphere nonexplosive;

(3) There are multiple vehicular openings to all active mine areas, sufficient to allow fire and rescue vehicles full access to all parts of the mine in which miners work or travel;

(4) Roadways or other openings are not supported or lined with combustible materials;

(5) The mine shall not have a history of flammable-gas emission or accumulation, and the mined substance shall not have a history associated with flammable or toxic gas problems; and

(6) Any reported gas or oil well or exploratory drill hole shall be plugged to within 100 feet above and below the horizon of the ore body or seam.

(d) Each application shall contain:

(1) An explanation of the special mining conditions;

(2) The number of miners employed underground at the mine on each shift;

(3) The distances from the two nearest mine rescue stations;

(4) The operator's mine fire history;

(5) The operator's established escape and evacuation plan;

(6) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(7) Other relevant information about the operator's mine which may be requested by the District Manager.

(e) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(f) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the mine operating under special mining conditions;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(g) Where alternative compliance is approved by MSHA the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the alternative plan.

(h) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(i) (1) An approved plan for alternative mine rescue capability shall be subject be to revocation or modification by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 49.5 Mine rescue station.

(a) Except where alternative compliance is permitted, every operator of an underground mine shall designate, in advance, the location of the mine rescue station serving the mine.

(b) Mine rescue stations are to provide a centralized storage location

for rescue equipment. This centralized storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure.

(c) Mine rescue stations shall provide a proper storage environment to assure equipment readiness for immediate use.

(d) Authorized representatives of the Secretary shall have the right of entry to inspect any designated mine rescue station.

§ 49.6 Equipment and maintenance requirements.

(a) Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved under Subpart H of Part 11 of this title), and any necessary equipment for testing such breathing apparatus;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbant chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for six hours while using the breathing apparatus during rescue operations;

(3) One extra oxygen bottle (fully charged) for every six self-contained compressed oxygen breathing apparatus;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system (approved under Part 23 of this title) or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. These communication systems shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner which will assure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days. A record of inspections and tests shall be maintained at the mine rescue station for a period of one year.

§ 49.7 Physical requirements for mine rescue team.

(a) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The first such physical examination shall be completed within 60 days prior to scheduled initial training. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

(b) In determining whether a miner is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

(1) Seizure disorder;

(2) Perforated eardrum;

(3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1,000 and 2,000 Hz;

(4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;

(5) Distant visual acuity (without glasses) less than 20/50 Snellen scale in one eye, and 20/70 in the other;

(6) Heart disease;

(7) Hernia;

(8) Absence of a limb or hand; or

(9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(c) The operator shall have MSHA Form 5000-3 certifying medical fitness completed and signed by the examining physician for each member of a mine rescue team. These forms shall be kept on file at the mine rescue station for a period of one year.

§ 49.8 Training for mine rescue teams.

(a) Prior to serving on a mine rescue team each member shall complete, at a minimum, an initial 20-hour course of instruction as prescribed by MSHA's Office of Education and Training, in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team. The initial training requirement is waived for those miners on a mine rescue team on the effective date of this rule.

(b) Upon completion of the initial training, all team members shall receive at least 40 hours of refresher training annually. This training shall be given at least 4 hours each month, or for a period of 8 hours every two months. This training shall include:

(1) Sessions underground at least once each 6 months;

(2) The wearing and use of the breathing apparatus by team members for a period of at least two hours while under oxygen every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Advanced mine rescue training and procedures; as prescribed by MSHA's Office of Education and Training and;

(5) Mine map training and ventilation procedures.

(c) A mine rescue team member will be ineligible to serve on a team if more than 8 hours of training is missed during one year, unless additional training is received to make up for the time missed.

(d) The training courses required by this section shall be conducted by instructors who have been employed in an underground mine for a minimum of one year within the past five years, and who have received MSHA approval through:

(1) Completion of an MSHA or State approved instructor's training course and the program of instruction in the subject matter to be taught.

(2) Designation by the Office of Education and Training as approved instructors to teach specific courses, based on their qualifications and teaching experience. Previously approved instructors need not be re-designated to teach the approved courses as long as they have taught those courses within the 24 months prior to the effective date of this part. Where individuals are designated, the Office of Education and Training may waive the underground experience requirement.

(e) The Chief of the Training Center may revoke an instructor's approval for good cause. A written statement revoking the approval together with reasons for revocation shall be provided the instructor. The affected instructor may appeal the decision of the Training Center Chief by writing to the Director of Education and Training, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. The Director of Education and Training shall issue a decision on the appeal.

(f) Upon request from the Office of Education and Training, MSHA, the operator shall provide information concerning the schedule of upcoming training.

(g) A record of training of each team member shall be on file at the mine rescue station for a period of one year.

§ 49.9 Mine emergency notification plan.

(a) Each underground mine shall have a mine rescue notification plan outlining the procedures to follow in notifying the

mine rescue teams when there is an emergency that requires their services.

(b) A copy of the mine rescue notification plan shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the plan.

§ 49.10 Effective date.

All provisions and requirements of this part shall become effective on July 11, 1981.

§§ 57.4-67, 57.4-59, 57.4-70 [Revoked]

2. Revocation of existing standards. Effective July 11, 1981, existing metal and nonmetal underground standards at 30 CFR 57.4-67, 57.4-59 and 57.4-70 are revoked.

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Part III

Environmental Protection Agency

Toxic Substances Control; Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 717

[FRL 1483-4]

Toxic Substances Control Act; Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 8(c) of the Toxic Substances Control Act requires that "any person who manufactures, processes, or distributes in commerce any chemical substance or mixture" must keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture." Section 8(c) requires that employee allegations be kept for 30 years, and all other allegations be kept for five years. This proposal sets out definitions and procedures for implementing section 8(c).

Note.—Persons who "process" chemical substances or mixtures include companies that manufacture consumer goods or industrial products. Manufacturers of automobiles, paper products, textiles, or electronic components, for example, should consider commenting on this proposed rule.

DATES: In order for EPA to consider comments during development of the final rule, it must receive written comments on this proposal on or before October 9, 1980 (see *Public Meetings* below for a discussion of meeting arrangements.)

ADDRESS: Written comments should bear the document control number OTS-083001 and should be submitted to the Chemical Information Division, Office of Pesticides and Toxic Substances (TS-793), Attention: Document Control Officer, Environmental Protection Agency, Washington, DC 20460. All written comments concerning this notice will be available for public inspection at the OPTS Reading Room, 447 East Tower, from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Director, Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 800-424-9065; in Washington call 554-1404.

SUPPLEMENTARY INFORMATION: This proposed rule to implement section 8(c) of the Toxic Substances Control Act, 15 U.S.C. 2607(c), would apply to all persons who manufacture or process chemical substances or mixtures, and to all distributors except retailers. These persons would be required to keep records of allegations of "significant" adverse reactions. These are defined as reactions that suggest that a chemical may cause long-lasting or irreversible damage to health or the environment. In the proposal, records of written and oral allegations that are not anonymous and that implicate a chemical substance or mixture would have to be kept at the plant site where they are received. For reporting purposes, companies would have to transfer data from allegation records to a standard EPA form. The proposal discusses options for automatic reporting of certain allegations to EPA. The proposal also contains a provision under which EPA will require firms to submit records at the specific request of EPA.

EPA has worked closely with the Occupational Safety and Health Administration and the Consumer Product Safety Commission during the development of this proposal. The Agencies intend to share information about workers and consumers that results from this requirement.

Purpose and Scope

Section 8(c) of the Toxic Substances Control Act requires that persons who manufacture, process, or distribute chemical substances or mixtures record allegations of significant adverse reactions to such chemical substances or mixtures. The section also requires that such records be submitted upon the request of the Administrator or his duly designated representatives. This proposed rule implements these requirements. The rule proposes a system of recordkeeping and reporting which would serve the following purposes:

(a) It would establish an invaluable historical record of allegations of significant adverse reactions and related information which EPA can examine whenever a chemical is discovered to present possible risks to human health or the environment; and

(b) It would provide a means to reveal patterns of adverse effects which might otherwise either not be noticed or go undetected for long periods of time, and to identify previously unknown chemical hazards.

Definitions

Section 8(c) does not make recordkeeping contingent upon evaluating or verifying an allegation. In the proposed rule, the Agency has defined an allegation in part as a "statement made without formal proof or regard for evidence." This lack of need for supporting information is one factor that distinguishes section 8(c) from section 8(e) of TSCA (substantial risk notification). Section 8(e) states that persons must immediately inform the Administrator if they have information that reasonably supports the conclusion that a chemical substance poses a substantial risk of injury to health or the environment. A report of substantial risk of injury, unlike an allegation of a significant adverse reaction, is accompanied by information which reasonably supports the seriousness of the effect or the probability of its occurrence (see 43 FR 11110 *et seq.*, March 16, 1978). However, the Agency recognizes that an allegation (or allegations) recorded under section 8(c) could result in a notification of substantial risk filed under section 8(e) if a firm obtains additional information that meets the higher standards of section 8(e). If this happens, and a firm files a section 8(e) report, the Agency would not require the firm to separately report to the Agency under section 8(c) (see discussion under Reporting Requirements). However, the opposite is not true: complying with section 8(c) requirements does not relieve a firm of any responsibilities under section 8(e).

For the purposes of this rule only, "significant adverse reactions to health or the environment" are those which indicate the possibility of long-lasting or irreversible damage to health or the environment. We have included descriptions of effects to illustrate what we mean by "significant." Specifically, we intend to exclude one-time effects, such as those resulting from an accidental poisoning or an accidental spill of a caustic chemical onto the skin. This exclusion is proposed because we believe that recordkeeping under section 8(c) is important for health effects whose implications may not be fully apparent at the time of their occurrence. In addition, the Occupational Safety and Health Administration recordkeeping requirements for work-related injuries and illnesses cover serious effects of the kind that we propose to exclude (see 29 CFR Part 104).

This proposed rule does not attempt to enumerate all of the specific effects and circumstances which may constitute a significant adverse reaction. Rather, we have measured significance in terms of when the adverse reaction occurs in relation to exposure to a substance, and how long the effects last. Health effects that last only for the duration of the exposure should be recorded only if they occur repeatedly. This means that

nausea or headaches may be significant adverse effects if they are experienced repeatedly by a person upon exposure to the substance. Effects that persist beyond the period of exposure (such as kidney dysfunction or sterility) are reactions that should be recorded, even if alleged only once.

We have broadly defined adverse environmental reactions that should be recorded. Generally, adverse environmental effects may be indicated by gradual or sudden changes in the composition of plant or animal life in an area. Such adverse changes in the composition of life could be indicated by abnormal numbers of animal or plant deaths; a decline in the vigor or reproductive success of a species; a reduction in either crop or livestock agricultural productivity; or alterations in the behavior of a species.

The Agency requests comments on the appropriateness of these proposed criteria. Also, we invite persons wishing clarification of what constitutes a recordable allegation to include in their comments either real or hypothetical examples for interpretation. In the preamble to the final rule, we will address typical examples submitted in response to this proposal and use them to clarify the definition.

Persons Subject to This Part

This proposal would apply to all persons who manufacture or process chemical substances or mixtures, and to all distributors of chemical substances and mixtures except retailers. The term "manufacture" is defined in TSCA to include manufacture, import, and production. The term "process" is defined in TSCA to mean preparation of a chemical substance or mixture for distribution in commerce (a) in the same or different form or physical state from that in which it was received, or (b) as part of an article. Thus, persons who ordinarily consider themselves to be "users" because all that they do is incorporate a chemical into an article, are "processors" under TSCA. Retailers are firms that sell a final product to ultimate purchasers who are not commercial entities. The definitions of "manufacture for commercial purposes" and "process for commercial purposes" are discussed in greater detail in the preamble of the proposed TSCA section 8(d) rule "Health and Safety Data Reporting", published December 31, 1979, in the Federal Register (44 FR 77470).

Retail distributors are the only small businesses that the Agency proposes to exempt from the present rule. Retailers are excluded because the potential for retail employees being exposed is limited since they handle packaged products. In addition, it appears that allegations from employers or consumers regarding brand name products are, as a general practice, sent by retailers to the manufacturer or processor, because it is in the retailers' interest to report to their suppliers any customer problems resulting from the use of products (see item 2 of the record described at the end of this preamble). The supplier will be a manufacturer, processor, or distributor who is subject to this rule. Hence, manufacturers', processors', and distributors' records would be generally more comprehensive, and should be sufficient for the purposes of this rule. In addition, retailers are so numerous and include so many small firms that we will consider including them in this rule only if it appears that exempting them will substantially reduce the effectiveness of this rule. The Agency solicits comments on whether retailers or other small businesses should be exempt from the requirements of this rule. If the comments make it clear that including retailers will make the rule substantially more effective and the greater effectiveness is justified when weighed against the burden that would be imposed, then retailers will be included in the rule as promulgated.

Allegations Which Must Be Kept

The proposed rule would require companies to keep records of written *and* oral allegations so long as the allegations are not anonymous, and so long as they are made to an appropriate company official, e.g., a supervisor, a company physician or health unit staff member, a company agent, or a public relations officer. The Agency believes that oral allegations should be written down, since many people are more likely to submit allegations by telephone than in writing.

This proposed rule does not limit the recording of allegations to those which describe a chemical substance by exact name. The Agency believes that requiring an exact name would be too restrictive because there will be instances when employees, plant neighbors, or consumers (or the firm itself) will not be able to name a specific chemical—either because their knowledge of chemistry is limited or because they have encountered more than one chemical and cannot pinpoint only one chemical as the cause. The proposed rule requires firms to keep not only allegations that name a specific chemical substance, but also those that *reasonably* implicate a chemical. Therefore, the proposed rule states that firms must also keep allegations that name or identify the following: an article which contains a specific chemical substance or mixture; a company process or operation that involves one or more chemical substances; or an effluent, emission, or other chemical discharge from the site of manufacturing, processing, or distribution.

Recordkeeping Requirements

As mentioned earlier, a major purpose of this rule is to establish a complete record for both the EPA and industry, so that a body of knowledge will exist for reference should concern arise over a particular chemical. The record can provide another means for industry to monitor the safe production and use of chemical substances and mixtures. In addition, EPA could request the submission of allegations that involve a chemical which is being investigated. After analysis, those allegations could then be used during the assessment process to supplement already known toxicity and exposure data on the chemical substance. A further purpose of the records could be to provide a means during inspections to help determine whether a chemical problem exists at a plant site.

This proposal would require firms to keep copies of original allegations and to establish records that contain specified information about the allegations. A standard EPA form is offered as an optional recordkeeping form. The same form would be mandatory for reporting purposes. It is important that EPA receive the reports in a standard format so that they can be processed and evaluated efficiently. On the other hand, the form would be optional for recordkeeping since the Agency recognizes that firms may have already developed other forms or automated systems of recordkeeping which may not be compatible with the proposed EPA form. The proposed rule specifies the information that must be kept if the EPA form is not used. The Agency solicits comments concerning the appropriateness and usefulness of the information on the form. The form appears as Appendix I to the proposed rule.

This rule would also require firms to file allegation records and forms in a specified way so that this information could be easily retrieved. Allegation records and forms would be filed by chemical substance if the substance is known. However, for cases in which it is not possible to identify a specific chemical as the cause of a problem, firms would establish files according to mixture identity, and, if this cannot be determined, by the identity of the

article, company process or operation, or plant site discharge involved.

The rule would require that the results of any follow-up investigation be kept with the allegation records and the corresponding EPA form or company form or file. This is important to a basic purpose of the rule, which is to establish a complete historical record. Such a record should include information that the firm recorded on its own, and information that was recorded because of requirements set by another agency, such as the Occupational Safety and Health Administration (OSHA).

A firm must keep allegation records, recordkeeping forms, and the results of any follow-up investigations at the site where the allegation is received. The Agency believes that it is logical to keep a complete record at the site where the problem occurs, for reference purposes. In connection with the proposed automatic reporting requirement, plant sites must also send copies of the EPA standard form or company form to be aggregrated and reported by the company headquarters, if this differs from the site where the allegations were received.

We have included an alternative method of compliance for distributors. This would permit a distributor to send allegations to the appropriate manufacturer or processor instead of keeping them as records. The distributor would be required to send an allegation within five days of its receipt, and to keep a log (thirty years for employee allegations, five years for others) showing the name and address of the person to whom the allegation was sent, the date it was sent, and a brief description of the chemical that is the subject of the allegation. This would greatly reduce the recordkeeping requirement for distributors, while adding only a minimal burden to the manufacturers and processors who would have already established procedures for recordkeeping and reporting allegations. Furthermore, this provision would reduce the number of firms that are required to retain allegation records and to report to EPA. The Agency invites comments on the benefits or burdens of this alternative compliance method and whether it should be included in the final rule.

To avoid duplicating records that already exist, this rule proposes an alternative compliance method for keeping consumer complaints. Firms may already keep records that may be required by this rule because of requirements in regulations carrying out section 16(b) of the Consumer Product Safety Act (CPSA). If so, these firms would not be required to make copies of these CPSA records to include as part of the section 8(c) record. However, firms would keep consumer complaints for the length of the time outlined in this proposal and would report them as required by this rule. The Agency also thinks that the CPSA records should be retrievable in the same way as section 8(c) records. For example, records should be filed by chemical or article identity. The proposed rule therefore states that they must be retrievable in the manner outlined for section 8(c) allegations and forms, in section 717.15 of this proposed rule. The Consumer Product Safety Commission (CPSC) has proposed (see 42 FR 57642), but has not yet promulgated final rules under section 16(b) of the CPSA. This alternative would be available only when those final rules have been promulgated.

The Agency is concerned that there is no "feedback" mechanism for allegers to learn of any actions which may result from submitting an allegation to a company. Persons who make allegations will do so to protect themselves and others from similar effects in the future, and should know the outcome of their allegation. The Agency requests comments on the kinds of feedback mechanisms that EPA could require, how such mechanisms should be implemented, and who should be subject to such a requirement.

An employee making an allegation is afforded protection from employer reprisal. TSCA section 23(a) provides that "No employer may discharger any employee or otherwise discriminate against any employee * * * (who) assisted or participated * * * in any other action to carry out the purposes of this Act." An employee who believes that he has been discriminated against may file a complaint under section 23 with the Secretary of Labor.

Reporting Requirements

As proposed, this rule would require firms to submit certain allegations upon the request of the Agency. A firm would then be required to transcribe data from the allegation records to a one-page, pre-printed EPA form for admission. In addition, the Agency plans to include in the final rule a requirement for firms to automatically report allegations to EPA. Section 717.16(b)(1) of the rule has been reserved for such an automatic reporting provision.

The purpose of this provision would be to make the Agency aware of any unusual pattern of effects of unsuspected chemical problems. To detect such patterns, the Agency proposes to handle allegations reported under section 8(c) in a manner similar to that now used for substantial risk notices under section 8(e). First, each allegation will be carefully studied. The assessor will place the allegation in its proper context by also referring to existing literature on the chemical's toxicity and uses, examining available exposure data, and searching for other similar adverse reactions which are previously known. Should this study uncover a problem that warrants further investigation, the Agency may request other related information from the firm that submitted the allegation. Through this method, the Agency hopes to detect problems not previously recognized as serious or to uncover problems that have gone unnoticed. If the initial study finds that there may be a problem, but that it may be best handled under another authority, the allegation may be referred to OSHA, CPSC, or other EPA program offices. Each allegation will be entered in a data base that will extend the usefulness of the allegation. Primarily, the data system will permit EPA to track from one place all allegations reported to the Agency from anywhere in industry. Here again, by building an historical file, the Agency hopes to be able to detect patterns that were previously not recognized. A further statistical use will be to monitor the effectiveness of the final rule by allowing easy review of the types and numbers of allegations reported to EPA.

The Agency is concerned that automatic reporting be designed to result in the reporting of allegations that can be reasonably analyzed. The Agency is particularly concerned by comments from industry (see minutes of August 15, 1979 meeting, Public Record) that companies are often deluged with complaints after introducing any new or changed product. It may be that the sheer numbers of such allegations would overload the EPA's analytical resources if the complaints are about health effects. It is also possible that the numbers of chemical consumer products encountered by an individual consumer would make it unlikely that a consumer will be able to identify any one as a cause of a recordable adverse reaction. Therefore, the Agency is considering whether consumer allegations should be subject to reporting in a different manner than other allegations or should perhaps be exempt from automatic reporting. EPA requests comments on the best approach.

EPA is considering an automatic reporting system in which companies would forward allegation records to EPA whenever three are received in a twelve-month period for the same chemical substance, mixture, process,or

site discharge. The threshold number is a matter on which comment is solicited. The suggested threshold of three is based on the following considerations. The threshold must be a reasonable one in the context of several situations including plant neighbor allegations and consumer allegations, as well as employee allegations. We considered that the source of employee allegations about any one chemical or process will be a relatively small group of workers, even if the company is quite large. For instance, a threshold of ten to twenty allegations would be too high if there were only twenty to thirty workers involved in a process. On the other hand, three allegations from a group of thirty workers may indicate that a workplace problem is developing. Similarly, three allegations about a plant effluent would be unlikely to be simple coincidence and may indicate a problem. We have also taken into account the fact that the Conference Report on TSCA contains a statement that "[b]ecause the ultimate significance of adverse reactions is difficult to predict, the conferees intend that the requirements to retain records err on the side of safety". We believe that this Congressional advice applies equally to *reporting* under section 8(c).

The Agency is considering alternative definitions for the automatic reporting threshold. One option under consideration is to apply the threshold over a time period other than twelve months, up to as long as five years. Other options under consideration, which might subsitute for or complement the automatic reporting threshold, could require firms to immediately report to EPA:

(a) Any allegation of carcinogenic, mutagenic, tertatogenic or reproductive effects;

(b) Any allegation that involves:

(1) A new chemical substance (i.e., any substance that was reported to EPA under the premanufacture notification requirements of Section 5(a)(1)(A) of TSCA);

(2) A chemical substance that has been recommended by the Interagency Testing Committee for priority consideration by EPA; or

(3) A chemcial substance that is the subject of a proposed or final rule under Section 4, 5, or 6 of TSCA;

(c) Any allegation made by a representative of organized labor or any State or local government; or

(d) Any allegation that involves a chemcial substance which had been the subject of a previous section 8(c) report by that firm.

These possible alternatives, or some combination of them, may be adopted in the final rule and should be carefully considered in comments on this proposal.

The Agency is considering other methods of obtaining reports of section 8(c) allegations. In lieu of the threshold approach discussed above, the rule could require an annual statistical report of numbers of allegations received on chemical substances, mixtures, processes, and site discharges. The Agency invites comment on the statistical approach as well as suggestions of other alternatives. The final decision will take into account all comments on the alternatives and comments on the definition of "significant adverse reactions," since the two are interdependent.

In connection with automatic reporting under this rule, EPA believes the company headquarters should be responsible for reporting to EPA. The Agency thinks that this approach is logical because a firm's headquarters would be in the best position to aggregate allegations if the company has several plant sites. Placing the responsibility for automatic reporting on the company headquarters ensures that firms and EPA will be made aware of potential problems that occur in a number of plant sites, even if only one or two allegations are filed at each individual site. To simplify reporting, only company headquarters would report to EPA, and then would send only copies of the EPA standard form to the Agency. The headquarters would be required to send these copies to the Agency within fifteen days of the time the reporting threshold is reached. Subsequent allegations concerning the same cause would also be submitted to EPA if received within a year after the initial submission. Reporting by headquarters would also be required if the automatic reporting provision prescribes an annual statistical report instead of "threshold" reports. The Agency would like comments on these aspects of automatic reporting.

To avoid duplicating reports, the proposal contains a provision which would exempt firms from the automatic reporting requirement if a firm's investigation of a section 8(c) allegation has resulted in the firm's filing a report with EPA under section 8(e) of TSCA (substantial risk notification), or with the Consumer Product Safety Commission under section 15(b) of the Consumer Product Safety Act (substantial product hazard notification).

The proposed rule also contains a provision to protect the privacy of individuals. Specifically, firms are to omit names (or any other identifiers of individuals who have made allegations) when they report to EPA, unless EPA specifically requires names to be submitted in a particular case.

To help the Agency design the automatic reporting provision and predict its effects, discussions have been held with industry and other interested persons. Meetings were held on November 11, 1978, and August 15, 1979, to discuss the provisions of the rule and solicit information about the numbers and types of allegations now received by industry. Some useful information has been submitted to EPA, although more complete data are expected in response to EPA requests for industry assistance in this matter. Obtaining information on allegations industry currently receives will enable EPA to determine an automatic reporting requirement threshold that will serve the Agency's purpose without unnecessarily burdening industry. The automatic reporting threshold which EPA finally determines will depend on the extent to which industry submits complete information and accurate numbers. In the absence of accurate data from industry, EPA will determine an automatic reporting threshold from best estimates based on the information in the Agency's possession or gathered from other sources.

A "Reports Impact Analysis" has been prepared to estimate costs of a requirement that allegations be reported when three are received by a company in a twelve-month period. This document is in the public record available for review in the OPTS Reading Room. In this document are the basic costs of recording, filing, and reporting allegations; using an adjusted multiplier, the basic costs can be reapplied to any reporting requirement. Basically, the analysis found that automatic reporting will constitute the smaller fraction of the total costs of this rule to industry, with most costs resulting from the recordkeeping requirement. This estimate is a result of industry comments (see item 4 of the record described at the end of ths preamble) on previous drafts of this rule. These comments indicated that few allegations are received by firms each year. However, previous comments addressed a narrower definition of "significant adverse reactions" than the one in this proposal. The Agency specifically requests information about the number of allegations industry can expect to receive in view of the proposed definition.

The Agency will consider conducting a pilot test of any final automatic reporting requirements. The method of

conducting such a test could be to select certain segments of the potential respondents and require those persons to submit reports in accordance with the automatic reporting provision. Reports submitted over a specified period of time would be assessed before applying the requirement to all persons who keep records of allegations under section 8(c). The Agency is concerned about the broad impact that may result from reporting, in terms of both the number of respondents who may have to submit reports and the number of reports EPA may have to assess. Thus, a pilot test may determine the number of reports that would be submitted in relation to the number of allegations received. The Agency may be better able to estimate the impact on industry of a reporting requirement and to project the kinds of information reports may yield. In considering the need to test any reporting requirement, EPA will examine information submitted in response to this proposal and determine the need to learn more about the numbers and content of allegations now received by industry. The Agency invites comments on the need for a pilot test, the objectives of such a test, and procedures for selecting industrial segments for the test.

Existing Records

Many firms may already keep records of allegations of significant adverse reactions. Existing records may vary in terms of the content and manner in which they are filed. The proposed rule would not require firms to reorganize their records to conform with EPA's recordkeeping and automatic reporting requirements. However, firms are requested to review records of allegations received after enactment of TSCA (January 1, 1977) and before promulgation of this Part to determine if there are three or more allegations, as defined in this Part, that implicate any one substance, mixture, article, operation, or site discharge. If three or more allegations were recorded within any twelve-month period, the Agency requests that the allegations be transmitted to EPA.

Economic Impacts

The Agency can only estimate the number of allegations which may be received by industry and the costs which may result from the proposed rule. A review of the industries potentially subject to keeping records indicates that over 600,000 firms with approximately 20 million employees may be affected (see Appendix B, Reports Impact Analysis). Processors of chemical substances and mixtures may be found across the spectrum of mining, manufacturing, and wholesale trade industries (SIC codes 10–14, 20, 22–28, 31–39, 49–51). Analysis of the possible burdens to industry indicates that the highest likely annual recordkeeping cost to all of industry will be $450,000. Preliminary estimates are that 10,000–20,000 allegations may be received and filed annually, with an estimated cost of $22,500 to process each allegation. If an automatic reporting requirement were to result in 5% of these allegations being submitted to EPA (at an estimated cost of $55 per allegation package), the additional annual cost to all of industry would be $18,150. The Agency invites comments that estimate the number of allegations which may be received annually and the costs which may result from both recording and reporting to EPA. The reasoning behind the estimated costs is described in the "Section 8(c) Reports Impact Analysis". The analysis covers the costs for a company to receive, process, and file an allegation, and also the numbers of allegations which may be received annually by industry. These estimates are used to calculate the lowest and highest costs to industry which may result from keeping the section 8(c) records. The lowest and highest costs to industry from automatically reporting allegations to EPA are also estimated. While the analysis examines the costs to report three independent allegations received in a twelve-month period, we have extended that analysis to show the likely costs from different levels of reporting to EPA. The "Section 8(c) Reports Impact Analysis" is part of the Public Record and may be obtained by writing or calling the Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 800–424–9065; in Washington call 554–1404.

Confidentiality

Firms may assert a claim of business confidentiality for all or part of any records. EPA is aware of the need to maintain the confidentility of any legitimate trade secret. Confidential information will be safeguarded as provided in the "TSCA Confidential Business Information Security Manual" adopted by EPA in July, 1978.

Any claims of confidentiality must be made at the time of submission, and substantiated as described at 40 CFR 2.203(a)(2), within 15 working days of submission, and in the manner specified in § 717.17 of this proposed rule. This rule would require submission of two copies of records containing confidential material—one copy indicating what data are claimed as confidential and one copy without the confidential information. EPA will consider failure to submit two copies as a waiver of the confidentiality claim. However, EPA will notify firms who claim parts of records confidential if they did not submit the required two copies. This provision affords persons the opportunity to correct errors and thus prevent data claimed as confidential from being placed in the public file. To ensure proper handling, submissions must be addressed to the Document Control Officer of the Office of Pesticides and Toxic Substances.

Sunset Provision

Internal EPA regulations state that new reporting requirements will contain a provision for repealing that requirement on a specific date within five years after their promulgation. This proposed rule is exempt from the imposition of such a "sunset" requirement because the records are required by statute. However, the rule will be reviewed periodically in the years after it is promulgated to study its effectiveness and associated burdens. EPA will consider comments received from any source on the effectiveness of the rule, with the aim of reducing the burden on affected parties while satisfying the provisions of section 8(c).

Public Meetings

During the 90-day comment period, EPA staff responsible for developing this proposal will be available to meet with interested persons from individual companies, organized labor, trade associations, and environmental or consumer organizations. Most meetings will be held at EPA in Washington, D.C. However, to facilitate state and local comments, the Agency will hold one or two meetings outside of Washington, D.C., in a locale central to a large group or groups requesting the meeting. The Agency will determine time and place based on demonstrated need and interest.

EPA will provide facilities and make other necessary arrangements for such meetings. The meetings will be open to the public and the Agency will make transcripts or summaries of the meetings for inclusion in the public record.

Anyone interested in requesting a meeting or in learning the schedule of meetings may call the Industry Assistance Office at 800–424–9065 or, in Washington, 554–1404.

EPA encourages the public to use the Industry Assistance Office's toll-free telephone service during the early part of the comment period in order to clarify

its understanding of the proposal and develop comments.

EPA also encourages the public to use the opportunity for meeting-by-request, as offered above. The Agency has found that such meetings make it easier for the public to give EPA a sense of the predicted costs and process of compliance. Case-studies, impact analyses, interpretations of definitions used in the proposed rule, and thoughts on how a proposal would work in practice are particularly helpful to the Agency. Such material or experience, while it underlies them, often are not conveyed in written comments. Presentation of such material in a roundtable format enables the commentator to talk-and-walk his way through an anticipated impact and EPA to cross-check on the spot his meaning and assumptions. The Agency has found this sort of exchange enhances significantly the utility of such commentary.

Public Record

EPA has established a public record for this rulemaking (docket number OTS 083001). The record, along with a complete index, is available for inspection in the OPTS Reading Room, 447 East Tower, from 9:00 a.m. to 5:00 p.m. on working days (401 M Street, SW., Washington, DC 20460). This record includes basic information that the Agency considered in developing this proposed rule. The Agency will supplement the record with additional information as it is received. The record includes the following categories of information:

1. This proposed rule.
2. The Advance Notice of Proposed Rulemaking, published in the Federal Register on March 11, 1977 (42 FR 13579).
3. All comments on that Advance Notice.
4. A draft of this proposed rule, dated October 12, 1978, sent to selected industry, labor, and public interest groups.
5. All letters of transmittal sent with that draft, and comments received on it.
6. Minutes of a November 13, 1978 meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.
7. "Notification of Substantial Risk Under Section 8(e)," March 16, 1978 (43 FR 11110), and comments received.
8. Occupational Safety and Health Administration regulations on "Recording and Reporting Occupational Injuries and Illnesses" (29 CFR Part 1904), and forms revised in 1978.
9. Consumer Product Safety Commission proposed reporting requirements regarding recordkeeping of consumer product safety complaints, November 3, 1977 (42 FR 57642).
10. Consumer Product Safety Commission interpretation of policy for "Reports of Substantial Product Hazards," August 7, 1978 (43 FR 34988).
11. "Final Report on the Economic Impact of Proposed Recordkeeping Rules to Deputy Associate Executive Directorate for Economic Analysis, U.S. Consumer Product Safety Commission," Battelle, Columbus, Ohio, March 19, 1979.
12. Minutes of an August 15, 1979 meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.

EPA anticipates adding to the rulemaking record the following types of information:

1. All comments on this proposed rule.
2. All relevant support documents and studies.
3. Records of all substantive communications between EPA personnel and persons outside the Agency. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.
5. Any factual information considered by the Agency in developing the rule.

EPA will designate the complete rulemaking record, as prescribed by section 19(a)(3) of TSCA, on or before the date the regulation is promulgated, and will accept additional material for inclusion in the record at any time between this proposal and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

Note.—EPA has determined that this document does not contain a major proposal that requires preparation of a Regulatory Analysis under Executive Order No. 12044.

EPA proposes to establish a new 40 CFR Part 717 as set forth below.

Dated: June 27, 1980.

Douglas M. Costle,

Administrator.

PART 717—RECORDS AND REPORTS OF ALLEGATIONS OF SIGNIFICANT ADVERSE REACTIONS TO HEALTH OR THE ENVIRONMENT

Sec.

Authority: Sec. 8(c), Pub. L. 94-469, 90 Stat. 2029 (15 U.S.C. 2607(c))

§ 717.11 Scope and compliance.

(a) Section 8(c) of the Toxic Substances Control Act (TSCA) requires manufactures, processors, and distributors of chemical substances and mixtures: (1) To keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture"; and (2) to "permit inspection and submit copies of such records", upon request of any designated representative of the Administrator. This rule implements section 8(c) of TSCA. It describes the records to be kept and prescribes the conditions under which a firm must submit or make the records available to a duly designated representative of the Administrator.

(b) Section 15(3) of TSCA makes it unlawful for any person to "fail or refuse to (1) establish or maintain records, (2) submit reports, notices or other information, or (3) permit access to or copying of records as required by this Act or a rule thereunder". Section 16 states that violating section 15 makes a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 717.12 Definitions.

The definitions set forth in Section 3 of TSCA and the following definitions apply to this part:

(a) "Allegation" means a statement, made without formal proof or regard for evidence, that a chemical substance or mixture has caused an adverse reaction to health or the environment.

(b) "Firm" or "company" means any person that is subject to this rule, as defined in § 717.13, below.

(c) "Manufacture" or "process" means to manufacture or process for commercial purposes.

(d)(1) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture,

(i) For distribution in commerce, including for test marketing, and

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during ther manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(e) "Person" includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.

(f) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(g) "Retailer" means a person who distributes in commerce a chemical substance, mixture, or article to ultimate purchasers who are not commercial entities.

(h) "Significant adverse reactions" are reactions which may indicate a tendency of a chemical substance or mixture to cause long-lasting or irreversible damage to health or the environment. In addition to obvious indicators such as major human diseases or ecological damage, such indicators include:

(1) Health effects. (i) Which, although they persist only for the duration of exposure, such as nausea or impaired vision, are experienced repeatedly by a person upon exposure to the substance;

(ii) Which persist beyond the period of exposure, such as prolonged headaches or loss of muscle control; or

(iii) Which occur after cessation of exposure, such as sterility or delayed neurotoxicity; and

(2) Environmental effects, even if they are restricted to the environs of a plant or disposal site, such as gradual or sudden changes in the composition of plant or animal life in an area. Examples of this are: (i) Abnormal numbers of deaths of animals or plants, (e.g., fish kills);

(ii) Reduction of the reproductive success or the vigor of a species;

(iii) Reduction in agricultural productivity, whether crops or livestock; or

(iv) Alterations in the behavior or distribution of a species.

(i) "Site" means a contiguous property unit. Property divided only by a public right-of-way is considered one site. There may be more than one manufacturing plant on a single site.

(j) "Substance" means a chemical substance or mixture unless otherwise indicated.

§ 717.13 Who is subject to this Part.

All manufacturers, processors, and all persons who distribute substances in commerce except retailers, are subject to this rule. The exemption of retailers does not apply to retailers who are also manufacturers or processors of the substance in question.

§ 717.14 Which allegations must be kept.

(a) Firms must keep any allegation of a significant adverse reaction to health or the environment.

That implicates a substance by: (i) Naming a specific substance,

(ii) Naming an article which contains a specific substance,

(iii) Naming a company process or operation in which substances are involved, or

(iv) Identifying an effluent, emission, or other chemical discharge from a site of manufacturing, processing, or distribution of a substance; *and*

(2) That is submitted: (i) In writing and signed, or

(ii) Orally, but not anonymously,

(A) By an employee to a supervisor, company physician or health unit staff member, or company agent,

(B) By any source, such as an individual consumer, a neighbor of a plant, a public health official, or an organization on behalf of its members, to a company agent, public relations officer, or any other appropriate company official.

(b) An allegation of a health effect(s) on a single individual shall be counted as one allegation. For example, if an allegation is made in behalf of five individuals, it should be counted as five allegations. An allegation by a single source of an environmental effect shall be counted as one allegation.

§ 717.15 Recordkeeping requirements.

(a) *Contents of records.* (1) Upon receiving each written and signed allegation, a firm must date it and keep it. A firm must write down, date, and keep each oral allegation (including the name of the alleger) that is subject to this rule. All allegations shall be kept in a file designated for this purpose. An allegation is considered received when it is first reported to or known by a supervisor, company physician or health unit staff member, or any other appropriate company official.

(2) A firm must keep the data described in paragraph three of this section, either on EPA Form No. 7710-29, or by the firm's own recordkeeping method, and link the data to the written allegation by a unique reference number. Oral allegations may be written down initially on the EPA form. The data required by paragraph three must be kept with the original allegation. EPA Form No. 7710-29 is available from EPA Regional Offices or by writing or calling the Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, Washington, DC 20460, 202-554-1404 or 800-424-9065 (toll free).

(3) Firms must record the following: (i) The name of the company; the name and address of the plant site which receives the allegation; the name, title, and telephone number of the company official whom EPA can contact for further information; and the date the allegation is received.

(ii) The implicated substance, mixture, article, company process or operation, or site discharge (see paragraph four of this section).

(iii) A description of the alleger (e.g., "company employee", "individual consumer", "plant neighbor"). If the allegation involves a health effect, the sex and year of birth of the individual should be recorded.

(iv) A description of the alleged health effect(s), indicating whether the effect(s) is prolonged, recurrent, or incapacitating. The description must relate how the effect(s) became known and the alleged route of exposure, if ascertainable.

(v) A description of the nature of the allaged environmental effect, identifying the affected plant or animal species.

(4) Allegations must be filed according to one of the following: (i) Chemical substance identity;

(ii) Mixture identity, if the implicated chemical substance cannot be identified; or

(iii) Identity of the article, company process or operation, or site discharge involved, if the implicated chemical substance or mixture cannot be identified.

(5) The results of any company investigation or further required report that is made following a particular allegation must be kept by the firm with

the allegation and the corresponding EPA form or company record. For example, if an employee allegation results in a requirement for the firm to record the case on Occupational Safety and Health Administration Form 101 or appropriate substitutes (see 29 CFR Part 1904 for requirements under the Occupational Safety and Health Act of 1970), a copy of the OSHA record must be included in the allegation file.

(b) *Retention period.* Firms must keep records relating to employee allegations (whether submitted by or on behalf of the employee) for 30 years from the date they are received; all others must be kept for five years.

(c) *Location of records.* Firms must keep copies of the allegation, EPA Form No. 7710-29 or the company form or file, and the results of any follow-up investigation at the site where they are received. Copies of the EPA form or company form or file must also be kept at company headquarters if this differs from the site where the allegation is received.

(d) *Transfer of records.* (1) If a firm ceases to do business, the successor must receive and keep all the records that must be kept under this rule.

(2) If a firm ceases to do business and there is no successor to receive and keep the records for the prescribed period, these records must be transmitted by registered mail to EPA.

(e) *Alternative compliance methods.* (1) Distributors can satisfy the requirements of this rule by establishing and carrying out procedures for sending allegations to the appropriate processor or manufacturer within five days of receiving them. Distributors must keep a log of transmitted allegations, showing the name and address of the manufacturer or processor to whom the allegation was forwarded, the date on which each allegation was forwarded, and a brief description of the implicated chemical substance, mixture, article, or site discharge. The distributor must keep this log for thirty years for employee allegations and five years for others. This alternative compliance method does not apply to distributors who are also processors or manufacturers of the substance in question.

(2) Firms may keep allegations which are also subject to recordkeeping requirements under section 16(b) of the Consumer Product Safety Act in the manner required by the Consumer Product Safety Commission (see 16 CFR 116). However, those allegations must be retrievable according to the requirements of § 717.15(a)(3). Those allegations are also subject to the retention and reporting requirements of this rule. Firms must transcribe those allegations to EPA Form No. 7710-29 only if they become subject to the reporting requirement of § 717.16.

§ 717.16 Inspection and reporting requirements.

(a) *Inspection.* Firms must make records of allegations available for inspection by any duly designated representative of the Administrator.

(b) *Automatic reporting.*

(1) [Reserved]

(2) Whenever an investigation of an allegation(s) has resulted in a report to the EPA under section 8(e) of TSCA (substantial risk notification, see 43 FR 11110, March 16, 1978) or a report to the Consumer Product Safety Commission under section 15(b) of the Consumer Product Safety Act (substantial hazard notification, see 16 CFR Part 1115), the requirement for automatic reporting under this section will be considered waived by the EPA.

(c) *Other reporting.* At the request of any duly designated representative of the Administrator, each person who is required to keep records under this rule must transcribe the allegation to EPA Form No. 7710-29 and submit copies of those forms. EPA will announce any such requirements for submitting records, apart from automatic reporting under paragraph (b) of this section, by a notice in the Federal Register if large numbers of firms are involved. When only a few are involved, EPA will announce the requirements by letters to appropriate firms, signed by the Assistant Administrator for Pesticide and Toxic Substances or his designee, and will specify which records must be submitted.

(d) *How to report.* Firms must submit records (preferably by certified mail) to the Document Control Officer, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, Washington, DC 20460.

(e) *Privacy.* Firms must omit names or other identifiers of individuals who have made allegations whenever they appear in records forwarded to EPA under paragraph (b) of this section, in order to avoid jeopardizing the privacy of those individuals. EPA will require the names of individuals only for purposes of follow-up investigations. EPA will then explicitly request the records in a Federal Register notice or letter as indicated under paragraph (c) of this section.

§ 717.17 Confidential business information.

(a) Firms may assert a claim of business confidentiality covering all or part of any records they submit. EPA will not disclose information covered by a claim except in accordance with the procedures set forth at 40 CFR Part 2, as amended on September 8, 1978, 43 FR 39997 and March 23, 1979, 44 FR 17673. Firms claiming confidentiality on any portion of allegations reported to EPA must substantiate that claim of confidentiality in writing to EPA within 15 days of reporting the allegations to EPA. Written substantiation must accompany any records submitted under § 717.16(c).

(b) Section 14(b) of TSCA states that EPA may not withhold from disclosure, on the grounds that they are confidential business information, health and safety studies of any substance that has been offered for commercial distribution, or for which testing is required under TSCA section 4, or for which notice is required under TSCA section 5, except to the extent that disclosure of data from such studies would reveal:

(1) Processes used in the manufacturing or processing of a chemical substance or mixture, or

(2) The portion of a mixture comprised by any of the chemical substances in the mixture.

Any respondent who wishes to assert a claim that part of a study should be withheld form disclosure because disclosure would reveal a confidential process or quantitative mixture composition should explicitly explain the basis of the claim and clearly demarcate the material subject to the claim.

(c) If no claim of confidentiality is made for the records submitted to EPA, they will be placed in an open file, which will be available to the public without further notice to the firm.

(d) To assert a claim of confidentiality for data contained in records, firms must submit two copies of the record:

(1) One complete copy for internal EPA use must specifically indicate the data that the firm claims as confidential, by designating and marking the information on each page with a label such as "confidential", "proprietary", or "trade secret".

(2) The second copy must not contain any of the information claimed as confidential in the first copy; this copy will be placed in an open file that is available to the public.

(3) If the firm does not provide the second copy, EPA will notify the firm by certified mail. If EPA does not receive the second copy within ten days after the firm receives the notice, the first copy will be placed in the public file.

(e) Nothing in this section precludes EPA from withholding information in an allegation if disclosing that information would be an unwarranted invasion of personal privacy.

40 CFR Part 717

Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

Appendix I

The following is the proposed form to record and report

BILLING CODE 6560-01-M

NOTE Please read instructions on reverse prior to completing this form.	U.S. ENVIRONMENTAL PROTECTION AGENCY RECORD OF ALLEGED SIGNIFICANT ADVERSE REACTIONS TO CHEMICAL SUBSTANCES OR MIXTURES *(This information required under the TSCA, Section 8(c))*	*Form Approved* *OMB No. 158-OXXX*

SECTION I – Company Identification

NAME AND TITLE OF COMPANY OFFICIAL		PHONE NUMBER	DATE OF ALLEGATION
COMPANY NAME		DIVISION AND PLANT NAME	
COMPANY ADDRESS		PLANT SITE ADDRESS	
CITY	COUNTY	CITY	COUNTY
STATE	ZIP CODE	STATE	ZIP CODE

SECTION II – Chemical Identification

NAME *(Chemical Substance/Mixture/Article/Process/Effluent, Emission or Other Discharge)*

REFERENCE NUMBER TO VERBATIM ALLEGATION

SECTION III – Alleged Significant Adverse Reactions

☐ COMPANY EMPLOYEE ☐ INDIVIDUAL CONSUMER ☐ PLANT NEIGHBOR ☐ OTHER *(Specify)*

CHECK THE CATEGORY OF THE ALLEGED REACTION

HEALTH EFFECTS

PROVIDE THE FOLLOWING FOR PERSONS EXPERIENCING HEALTH EFFECTS

☐ MALE ☐ FEMALE YEAR OF BIRTH

☐	CANCER *(Specify Body Site)*	☐	NERVOUS SYSTEM DISORDER	☐	SKIN PROBLEM
☐	BIRTH DEFECT	☐	BEHAVIORAL DISORDER	☐	EYE AILMENT
☐	STERILITY	☐	RESPIRATORY DISORDER	☐	HEADACHE
☐	OTHER REPRODUCTIVE DISORDER	☐	GASTRO-INTESTINAL DISORDER	☐	OTHER *(Specify)*
☐	BLOOD DISORDER	☐	NAUSEA OR VOMITING		
☐	CARDIOVASCULAR DISORDER	☐	DIARRHEA		

ENVIRONMENTAL EFFECT

☐	ANIMALS AFFECTED *(Give names)*	☐	PLANTS AFFECTED *(Give names)*	☐	OTHER *(Specify)*

SECTION IV – Description and Comments

BRIEFLY DESCRIBE THE EFFECT(S) CHECKED IN SECTION III, DESCRIBE HOW THE EFFECT(S) BECAME KNOWN, AND, IF POSSIBLE, INDICATE IF THE EFFECT(S) IS/ARE PROLONGED OR RECURRENT OR INCAPACITATING. ANY PERTINENT COMMENTS SHOULD BE INCLUDED. *(Contiue on reverse if necessary)*

U.S. EPA USE ONLY

EPA Form 7710-29 (12-79)

CONTINUATION OF SECTION IV

INSTRUCTIONS

WHO MAY COMPLETE THIS FORM

An employee's supervisor, a company physician or health unit, a company agent, public relations officer or any other responsible company official.

Section I
Enter the addresses of the company headquarters making the report and the plant site where the allegation was received.

Section II
Write the name of the chemical material which is alleged to have caused a significant adverse reaction to health or the environment. If a specific chemical substance cannot be identified, then identify the material by the most specific of the following: a MIXTURE, an ARTICLE or PRODUCT, an industrial PROCESS or OPERATION, or an EFFLUENT, EMMISSION, or other industrial SITE DISCHARGE. Indicate the CAS number if a chemical substance is specified.

A unique reference number must be included on this form that links it to the original written allegation, and this form must be kept in the same file as the original allegation.

SECTION III
Check the box that best describes the source of the allegation. The name of the individual making the allegation should NOT be included on this form. If the box "Other" is used, provide further identification of the source *(e.g., company name, consumer group, public health organization, etc.)*.

If the allegation involves a health effect, the sex and year of birth of the person making the allegation should be recorded, if possible.

Check the box or boxes which best describes the alleged effect(s). If the allegation concerns an environmental effect, in addition to checking the box, give the name of the animal(s) or plant(s) alleged to have been affected in the space provided.

Section IV
Describe, in the words of the person making the allegation when possible, the effect(s) and indicate whether it is PROLONGED, RECURRENT or INCAPACITATING if appropriate. Briefly describe how the effect(s) became known and the alleged route of exposure. Allegations naming cancer as a health effect should specify the body site *(e.g., liver)* and clearly describe the cancer.

Any clarification of the allegation, known explanation of the cause, or extenuating circumstances should be included if known at the time this form is filled out. The results of a follow-up investigation should not be included in this Section, but should be filed with this form as a separate statement.

This Section may be continued on the reverse of this form and an attached sheet of paper if additional space is needed to give a complete description.

BILLING CODE 6560-01-C

Section 8(c) Reports Impact Analysis

Legal Authority

1. Section 8(c) of the Toxic Substances Control Act (TSCA) requires all manufacturers, processors, and distributors of any chemical substance or mixture to keep records of significant adverse reactions to health or the environment alleged to have been caused by the chemical substance or mixture. Employee allegations must be kept for 30 years, and all others for five years. Records required to be maintained will include consumer allegations of harm to health, reports of occupational disease, and complaints of injury to the environment from any source. Each person required to maintain these records must permit their inspection and submit copies upon request by any duly authorized representative of the Administrator.

2. Background

a. *Purpose.*—The proposed rule will tell manufacturers, processors, and wholesale distributors what kinds of allegations to record and when to report them to the EPA.

This rule will serve two major purposes: (1) To establish an historical record to be examined whenever a chemical is discovered to present a possible risk; and (2) to reveal patterns of adverse effects or unsuspected chemical problems which should be considered during the hazard assessment process.

The Office of Testing and Evaluation (OTE) of the Office of Pesticides and Toxic Substances (OPTS), will review, analyze, and follow-up the allegations retained and submitted as a result of the section 8(c) requirement in TSCA. The Assessment Division, the Health Review Division, and the Environmental Review Division will study the submissions for signs of a hazard which may warrant further investigation or testing. Allegations that are submitted will be evaluated in an assessment document which will be abstracted for addition to the OPTS Chemicals In Commerce Information System (CICIS). That information will be used to (1) supplement data already known, (2) indicate an increase of a chemical substance's known hazard potential, (3) call attention to chemical substances previously considered to not present a hazard, or (4) identify previously unknown hazards. The Agency can then, as appropriate, use TSCA authorities to (1) require testing (section 4), (2) require submission of a significant new use notice (section 5), (3) ban or limit the manufacture or use (section 6), (4) declare an imminent hazard (section 7), or (5) require the reporting or retention of information that can be used for future analyses (section 8).

b. *Procedural Description.*—Firms subject to this rule will record written and oral allegations that implicate one of their chemical substances, by naming the chemical substance or mixture, or naming articles, industrial operations, or industrial site discharges that implicate a substance. These allegations will be stored in a file dedicated to section 8(c) allegations, and retained for 30 years (employee) or five years (all others). Distributors may forward to the appropriate manufacturer or processor any allegations received on that product, if they maintain a log containing specified information.

During the comment period for this proposal, the Agency will determine the conditions under which companies are to automatically report allegations to EPA. For the purposes of this analysis, it is hypothesized that whenever three allegations implicating the same cause are received within 12 months, the firm must forward copies of the standard EPA form to EPA within fifteen days after receipt of the third allegation. Section 8(c) reporting would be waived if the allegations result in a "Notice of Substantial Risk", under section 8(e) of TSCA, or a "Substantial Hazard Notification", under section 15(b) of the Consumer Product Safety Act.

Approximately 40,000 establishments that manufacture, process or distribute chemical substances and another 543,000 establishments which may process these substances will be subject to this rule. (See Appendix A to this report.) Retail distributors are exempted in this proposed rule, and other distributors may forward allegations to the appropriate manuracturer or processor.

c. *Unavailability From Other Data Sources.*—Records required by the Occupational Safety and Health Administration (OSHA) were examined as a possible substitute for the section 8(c) employee allegations. However, section 8(c) provides the means to allege the presence of a possible problem, without any proof. The OSHA Form 101 (see 29 CFR 1904) is intended to record accidents or document the cause of an injury, which is several steps beyond an allegation. The proposed rule directs that copies of any OSHA record that results from an allegation will be maintained with the section 8(c) record of the allegation.

The proposed rule does offer an alternative compliance method for retaining allegations or consumer complaints which are subject to recordkeeping requirements under section 16(b) of the Consumer Product Safety Act. These allegations have only to be filed and reported according to the requirements of this proposal.

3. *Alternatives*

(a) *Automatic Reporting Alternatives.* A number of variations are possible for an automatic reporting provision. In this Reports Impact Analysis, we have estimated costs of submitting allegations to EPA whenever three independent allegations are received on one chemical substance, mixture, article, process, or site emission in a twelve-month period. One alternative under consideration is to apply the threshold over a period of time other than twelve months, up to as long as five years. Patterns emerging over a longer time frame would have a better chance of discovery, yet the recordkeeping and file search burden would be increased for respondents. Other options under consideration might substitute for or complement the automatic reporting threshold. The rule could require firms to immediately report to EPA any allegations of specified effects (e.g., carcinogenic, mutagenic, teratogenic, or reproductive disorders). In addition, the rule could require firms to immediately report allegations about certain specified types of substances (e.g., new substances reported under Section 5(a)(1)(A) of TSCA, substances recommended by the Interagency Testing Committee, substances which are the subject of a proposed or final rule under Section 4, 5, or 6 of TSCA, or substances subject to previous section 8(c) reports). These alternatives could enable the Agency to examine allegations about selected chemical substances of concern. The Agency could require annual statistical reports or summaries of allegations received. The Agency could exempt individual consumer allegations from automatic reporting, because of the effects that product performance expectations may have on complaints. However, consumer compliants are likely sources of relevant information which could reveal patterns of significant proportions. Another option would be to require that consumer allegations be reported in a different manner than other allegations. The proposed rule requests comments on all of these alternatives.

(b) *Alternatives to Automatic Reporting.* The Agency could rely solely on inspecting records. This would reduce the cost to industry, and reduce the cost of EPA analysis of allegations that are submitted. The Office of Enforcement would have a significantly larger role if inspections were the major method of looking at allegations. The early warning mechanism would be lost, and thus EPA's capability to discover unsuspected hazards would be reduced.

(c) *Alternative to No Small Business Definition.* Different recordkeeping and reporting requirements could be based on the size of a firm. Different requirements would reduce the impact on small business while still covering a large portion of industry. However, there is no small business exemption in section 8(c), and such a provision would reduce the scope of the early warning mechanism resulting from automatic reporting to EPA.

(d) *EPA Reporting Form Alternative.* Use of the EPA form and the transcription requirement could be eliminated, and only the basic records would be reported to EPA. While this would eliminate a new form and reduce industry's paperwork, it would transfer to EPA the burden of sorting through many formats and kinds of information to properly assess the allegations. The form also provides industry with an additional guide as to what should be recorded, it is a simple one-page form to fill out, it simplifies assessment for EPA by having a standard format, and the form can be easily coded for computer entry.

(e) *Alternative to Excluding Retail Distributors.* All distributors could be subject to this rule, including retail distributors. Such an inclusion would require 1.4 million more businesses to retain and report allegations, and would significantly expand the coverage and impact of this rule. However, the potential for retail employee exposure is comparatively minimal, since retail distribution will mainly involve the handling of packaged products. Consumer allegations regarding name brand products will generally be sent to the manufacturer anyway—either directly by the consumer or indirectly via the retailer.

4. *Impact Analysis*

The following Impact Analysis has been prepared to examine the potential costs and

burdens of the proposed section 8(c) rule, both to industry and to EPA. To estimate the costs to industry, we have analyzed the time and probable personnel costs that may be incurred by a company to process and file an allegation once it has been received and recorded. Then, using estimates based on dialogues with industry, we have estimated the numbers of allegations which could be received annually by industry. By multiplying the estimated costs to process an allegation by the estimated number of allegations that could be received, we can make a reasonable estimate of the possible costs to industry from complying with the recordkeeping portion of the proposed rule. In addition, we have analyzed the potential costs to industry of complying with an automatic reporting requirement. To do so, we performed an analysis of the time and personnel cost to prepare and submit several independent allegations that implicate the same cause. While this analysis examined the cost of only one method of automatic reporting, we continued the analysis so that a range of costs are presented. We feel that the high and low costs of automatic reporting will draw comment and help the Agency examine alternatives. It is emphasized that this analysis, is composed of estimates (which may not be accurate), that those estimates are multiplied against other estimates, and the results may not be wholly realistic. However, for the purposes of analyzing the potential costs of this proposed rule, we feel that the costs presented below are within the range of actual costs. This analysis, as well as the preamble to the rule, offers our reasoning and solicits comment on many subjects. The Agency is dependent on commentors to offer alternatives to this method of analysis, provide actual figures to plug into our equations, and to improve our estimates.

I. Work Hour Requirements/Costs

A. *Respondents.* Approximately 583,000 firms employing 20 million workers will be required to record and report allegations. The following analysis, prepared by the Office of Regulatory Analysis and the Program Integration Division, describes the costs to industry of recording and automatically reporting allegations. Paragraphs two and three below (p. 10) are primarily concerned with "fixed costs", the costs to a company of receiving and filing an allegation. The recordkeeping requirements represent the largest and most costly impact of this proposed rule. The proposed costs of automatic reporting are included in paragraph 4 (p. 14) of this analysis because the Agency expects that some form of automatic reporting will be part of the final rule. One hypothetical set of conditions for reporting is presented here—three allegations implicating the same substance received within 12 months. However, the reporting threshold levels will be determined after considering comments on the proposed rule. Therefore, the costs of reporting will be some fraction or multiple of the figures in this analysis, and will depend on the automatic reporting conditions set forth in the final rule.

1. Work Hour Requirements/Costs Per Allegation

The time requirements and cost estimates for processing and submitting section 8(c) allegations are shown in Table 1 (p. 8). As previously stated, we have projected costs from the time an allegation is recorded. The cost estimate does not cover administrative costs to set up a file system or otherwise implement the rule. Further, some firms may design more extensive reviews of allegations than projected in this analysis. These costs are estimated for a typical firm, using labor cost estimates of: managerial time @ $30/hour, technical support staff @ $20/hour, and secretarial time @ $10/hour.

The unit cost is estimated for an average-sized firm. There may be variations from this cost for very large or very small firms. Also a lesser cost would occur for firms operating only one plant site since they would not incur the costs of forwarding the allegations to corporate headquarters. Alternatively, smaller firms may incur higher personnel costs because reviews may be performed by higher level personnel. However, this cost difference should not significantly affect the average.

The unit cost estimates given in Table 1 assume the following procedure for handling section 8(c) allegations:

a. Processing the Allegation: (i) An oral or written allegation of an adverse health or environmental effect is delivered to the plant manager from either an employee at the plant or from the public. The allegation is logged in by the secretary and reviewed by the plant manager.

(ii) The secretary forwards a copy of the allegation to the appropriate officer at corporate headquarters.

(iii) The allegation is received at corporate headquarters and reviewed by the appropriate officer. The section 8(c) allegation file is reviewed to determine if a file for the implicated chemical substance or mixture, article, industrial operation or site emission exists that contains other allegations.

(iv) A file on the chemical substance is created (if one does not already exist), and the allegation is filed.

b. Submitting a Group of Three Allegations Upon Receipt of the Third: (v) The file is retrieved and reviewed by managerial and technical staffs.

(vi) The allegations are transcribed to the standard EPA form and reviewed by the technical staff for accuracy.

(vii) Copies of the file are made, and the submittal package prepared.

(viii) The completed submittal package is then forwarded to EPA.

The "fixed" activity cost in Table 1 represents costs which will be incurred by the firm whenever a section 8(c) allegation is received, regardless of whether the allegation is ultimately forwarded to EPA. Since allegations are assumed to be submitted randomly throughout the year there are no appreciable economies of scale.

The "variable" cost component represents costs which would be incurred after three allegations had been received concerning a chemical and the three allegations must be submitted to EPA. Therefore, the total cost of processing three separate allegations on a chemical and then submitting the group to EPA can be calculated as follows:

($22.50 × 3) + $55.00=$122.50, see Table 1

Table I.—*Unit Cost of Compliance With Section 8(c) Requirements*

Activity	Time processing allegation	Time submitting allegation	Fixed activity cost	Variable activity cost
I. Processing the Allegation				
Allegation received	0.25 hour clerical	NA	2.50	
	0.25 hour managerial	NA	7.50	
Allegation forwarded to corporate headquarters	0.25 hour clerical	NA	2.50	
Allegation received at headquarters and reviewed:	0.25 hour managerial	NA	7.50	
Filed created; allegation filed	0.25 hour secretarial	NA	2.50	
II. Submitting the Allegations to EPA				
File retrieved, reviewed by managerial and technical staff	NA	0.25 hour secretarial		2.50
	NA	0.5 hour managerial		15.00
	NA	0.5 hour technical		10.00
Allegation transcribed to EPA form	NA	0.5 hour secretarial		5.00
	NA	0.5 hour technical		10.00
Copies made, materials prepared	NA	0.25 hour secretarial		2.50
	NA	0.25 hour managerial		7.50
Package sent	NA	0.25 hour secretarial		2.50
Totals	1.75 hour secretarial	1.25 hour secretarial	22.50	55.00
	0.05 hour managerial	0.75 hour managerial		
		1.0 hour technical		

2. Estimated Number of Allegations Received by Firms

The Agency has consulted with many sources to develop estimates of the number of section 8(c)-type allegations which are now received by industry. All estimates have had the same problem, namely that there never has been a requirement such as section 8(c), and we do not know for certain how many such allegations might be received annually. Due to the novelty of this requirement and the scant available data, the Agency has based this analysis on assumptions, estimates, and feedback on early drafts of the proposed rule. The groups also estimated the number of allegations that could be received annually based on definitions in an earlier draft of this rule. In that draft, "significant adverse reactions to health or the environment" were defined more narrowly. This proposal broadens the definition and coverage. Additionally, in the earlier draft, allegations were to name a specific substance, while this proposal allows persons making an allegation to cite a consumer product, industrial process or industrial site emission as the cause without specifying a chemical. These changes will increase the number of recordable allegations (some allegations may not be "recordable allegations" the first time, but may become recordable if the effect is experienced repeatedly by the same person). However, those industry estimates can still serve for estimating the potential number of allegations which may be received annually.

EPA has polled several sources to estimate the number of section 8(c)-type allegations received by industry each year. For the most part, the Agency has relied upon the following:

(a) Chemical industry and trade association contacts,

(b) Past experience of EPA staff with the chemical industry during the development of other section 8 rules, and

(c) Comparison with similar data collected by OSHA and BLS.[1]

Firms and chemical industry associations [2] which provided EPA with early estimates of the number of allegations received by chemical firms included:

(a) Chemical Manufacturers Association (CMA),

(b) Synthetic Organic Chemicals Manufacturers Association (SOCMA),

(c) American Texiles Manufacturers Institute (ATMI),

(d) National Retail Merchants Association (NRMA),

(e) National Retail Hardware Association (NRHA), and

(f) E.I. DuPont De Nemours & Co. (Inc.)

Estimates provided by the chemical industry used the number of company production employees as the basis for measuring the number of allegations received from any source by a company. So, the estimates of probable numbers of allegations a company might receive are based on the number of employees in the chemical industry, regardless of the fact that allegations may be submitted by consumers, plant neighbors, or others. In the case of estimates for section 8(c), the chemical industry used 1,000 employees as the common denominator as follows:

Number of allegations of all sorts ÷ Number of production employees

The substance of the chemical industry estimates is that 2–4 allegations will be received annually for every 1000 employees.

Since the chemical industry estimates of numbers of allegations are based on employment figures, we reviewed the number of production employees in firms which manufacture, process, or distribute chemical substances or mixtures (see Appendix A—Estimate of Persons Subject to TSCA Section 8(c)). Firms who manufacture and process chemical substances or mixtures can in large part be readily identifiable within the Standard Industrial Classification (SIC) codes 28 and 2911 (Group 1). However, additional manufacturers, processors, and distributors are spread throughout industry and commerce. "Chemical substance" under TSCA includes naturally occurring chemical substances, such as minerals and metals, and agricultural products, such as cotton. To make an accurate estimate of the section 8(c) impact, a determination was needed as to how many employees in all industries might be involved in the same kind of activity as employees in SIC codes 28 and 2911. The only source of information that comprehensively describes the make up and employment of U.S. industry is the Standard Industrial Classification Manual. The limitation of this source is that it classifies industry by end products and does not detail the activities involved in production. Therefore, one must rely on the description of end products to determine whether chemical processing is likely to be a part of the production. In addition, companies are classified according to their major products so it is possible that, for some companies, minor activities involving chemical processing may be missed. The analysis found that large segments of industry may include processors; however, in most of those segments, only a small percentage of the production employees can be expected to be involved in processing chemicals (as opposed to assembly work and other manufacturing activities). Examples of industries with incidental processing activities are apparel manufacturers (SIC 23), fabricated metal products (SIC 34), electrical machinery (SIC 36), and automotive manufacturers (SIC 37). In those segments (called Group 2 hereafter), chemical processing is expected to be incidental to the manufacture of another article. Therefore, for the purpose of estimating the number of section 8(c)-type allegations (which is based on estimates from the chemical industry), only a portion of the employees in Group 2 were counted. It was estimated that 10% of the employees in Group 2 on the average may be involved in chemical processing during the regular performance of duties. Some individual companies may be occupied 100% in chemical processing and others may be occupied 1%. As has been previously stated, the Agency has analyzed the costs of this completely new kind of requirement on scanty data and reasonable assumptions. We feel that 10% is a reasonable figure and is a multiplier that can be changed if better information is supplied through comments.

Appendix B to this analysis contains a listing of SIC codes that were selected as being either primarily engaged in manufacturing or processing chemical substances (Group 1), or as incidental processors or distributors (Group 2) (see Appendix A). Our review, using Bureau of Labor Statistics figures, concluded that over 583,000 establishments may manufacture, process, or distribute substances. In those establishments, there are estimated to be 3,200,000 employees in Group 1, and 17,200,000 employees in Group 2. The number of workers used to determine the possible number of allegations was the sum of the following equation:

Group 1 + (Group 2) (0.10) = Section 8(c) Worker Population = 4.9 million employees

Rounding off to an even 5 million employees:

(Number of Employees) × (2–4 allegations) ÷ 1000 employees = Number of Allegations = 10,000–20,000 allegations

This means that an average of 10,000–20,000 section 8(c)-type allegations could be received by industry each year.

3. Recordkeeping Cost Estimates

In Table 1 (p.6), we estimate that a company will expend 2.25 hours to receive and process an allegation (fixed cost), which is estimated to cost $22.50 per allegation. At $22.50 per allegation, for an estimated 10,000–20,000 allegations per year, the annual fixed costs to industry to process section 8(c)-type allegations is estimated to be $225,000–$450,000.

4. Automatic Reporting Cost Estimates

To assess the probable costs of an automatic reporting provision, we have

[1] The OSHA/BLS data on occupational injuries could not be used directly because they include illnesses from all occupational hazards rather than only those caused by exposure to chemical substances.

[2] These commentors and others are encouraged to provide estimates on the basis of the requirements proposed, since their estimates were based on an early draft.

estimated the numbers of allegations that might be submitted by firms to EPA. In addition, using the cost estimates in Table 1 (p.8), we have estimated the probable cost to industry if an automatic reporting provision is included in the final rule. For the purposes of this analysis, we have estimated the cost of an automatic reporting provision that requires the submission of allegations when three allegations about the same substance are received in a twelve-month period. These allegations would not have to be submitted to EPA except when three independent allegations are received about the same cause. The Agency estimates that only 3–5% of the total number of allegations received by industry will have to be submitted to EPA. The reason for this estimate is that we feel that it is improbable that three independent allegations about the same cause in the same twelve-month period will occur frequently. While this figure is clearly based on assumptions, we believe that this is a reasonable number from which to base cost estimates. If 3–5% of the allegations are reported, this means that EPA expects to receive between 300 (3% of 10,000) and 1000 (5% of 20,000) section 8(c) allegations per year. If these allegations are submitted to EPA in groups of three, the Agency anticipates receiving between 100 and 330 submittal packages each year.

In Table 1, we estimate that for a firm to review, transcribe, and forward a package of three allegations will require three hours and cost $55. Thus, the estimated annual cost to industry of submitting 100–330 packages of allegations is $5,500–$18,150.

We have also examined the possibility that the number of allegations submitted to industry may eventually double as the section 8(c) program becomes more widely known among employees and consumers. The cost estimates for this scenario are summarized in Table 2.

Costs to submit packages of allegations have been estimated for three scenarios in Table 2. In these scenarios we have estimated, according to three rates, the probable percentage of the allegations received by industry that could be automatically reported. For each scenario, costs have been computed for the different estimates of numbers of allegations that could be received annually by industry and subject to reporting to EPA. We estimate that industry may receive 10,000–20,000 section 8(c) allegations per year, and we have also computed the costs should industry receive double our estimate, or 40,000 allegations per year. Table 2 contains cost estimates for the following scenarios:

Scenario 1 Low reporting rate (3% of allegations received by industry are forwarded to EPA).

Scenario 2 "Most likely case" (5% of allegations received by industry are forwarded to EPA).

Scenario 3 "Worst possible case" (allegations are distributed such that all allegations received by industry (100%) must be submitted to EPA).

Each of these scenarios is broken down into three variations:

10,000—If 10,000 allegations are received by industry each year (2/1000 empl/yr)

20,000—If 20,000 allegations are received by industry each year (4/1000 empl/yr)

40,000—If 40,000 allegations are received by industry each year (8/1000 empl/yr)

TABLE 2—Estimated Costs of Automatic Reporting

BASIS OF COMPUTATION

Fixed Costs (Recordkeeping)

(Number of Allegations Received by Industry) × ($22.50)

Variable Costs (Automatic Reporting)

(Percent of Allegations Submitted to EPA) × (Number of Allegations Received by Industry) ÷ (Number of Allegations in Submittal Package)

[The product is divided by 3 because the $55 submittal cost is incurred only once for every three allegations submitted]

Total Cost to Industry = Fixed Costs + Variable Costs

SUMMARY OF RESULTS

	Number of Allegations Received by Industry		
	10,000	20,000	40,000
Scenario 1: 3% of Allegations Submitted to EPA	$230,500	$461,000	$922,000
Scenario 2: 5% of Allegations Submitted to EPA	$231,200	$468,300	$936,700
Scenario 3: 100% of Allegations Submitted to EPA	$308,300	$816,700	$1,633,300

Total Annual Cost to Industry of Automatic Reporting.

The total annual costs to keep and report section 8(c) allegations are estimated to range from a low of $230,500 (Scenario 1 at 10,000 allegations) to a high of $1,633,300 (Scenario 3 at 40,000 allegations). It should be noted that the "worst case" scenario (scenario 3) is considered to have nearly a zero probability of ever occurring; it is presented as an illustration of the absolute maximum cost which may be imposed on industry by the section 8(c) program. Similarly, there is a low probability that industry will receive 40,000 allegations per year, which is double the estimate we derived from industry input.

The costs for the "most likely" case scenario (Scenario 2 at 10,000–20,000 allegations) range from $231,200 to $468,300, depending ultimately on the number of allegations which are actually received by industry. EPA believes these figures from Scenario 2 represent the most realistic estimate of the section 8(c) program costs with automatic reporting included. If the number of allegations received by industry doubles to 40,000 allegations per year, the estimated annual costs may range from $922,000 (Scenario 1) to $1,633,300 (Scenario 3).

5. Comparing Recordkeeping to Automatic Reporting Cost Estimates

In conclusion, EPA estimates the total short-run cost to industry of the section 8(c) program to range from $230,500 to $816,700 if 10,000–20,000 allegations are received annually. In this estimate, "fixed" recordkeeping cost range from $225,000–$450,000, and "variable" reporting costs range from $5,500–$18,150. If the size of the program were to double due to increased worker and consumer awareness, the Agency estimates that the total cost to industry would rise to $922,000–$1,633,300. In this doubled estimate, "fixed" recordkeeping costs are $900,000, and "variable" reporting costs range from $22,000–$733,300. Except in the cases of Scenario 3 of Table 2, where 100% of the allegations are reported to EPA, the automatic reporting costs are very small compared to the basic cost of complying with the section 8(c) recordkeeping requirements. In none of these cases is the cost of the section 8(c) program very burdensome to either the industry as a whole or individual firms.

B. Agency (EPA) Impacts

Evaluation of section 8(c) submissions will require the Agency to devote the following resources:

1. *Prescreen:* (Chemical Information Division) The Document Control Officer receives, records on a log, classifies, and forwards the allegation package to OTE. These activities are estimated to require four hours per submitted package of three allegations.

2. *Assessment:* (Office of Testing and Evaluation) OTE has dedicated 2½ person years to assess section 8(c) allegations. Specifically, the Assessment Division and Health Review Division will each devote 1 person year; the Environmental Review Division will devote ½ person year. OTE is uncertain how long each allegation assessment should take, but if the section 8(c) submissions are a valid indicator, then each allegation should require eight hours, or 24 hours per package of three allegations.

3. *Data Entry:* (Chemical Information Division) The Systems Operations Branch estimates an annual cost of $100,000 for the contractor to abstract and enter section 8 (c), (d), and (e) submissions. These submissions will be entered onto the OPTS CICIS (Chemicals In Commerce Information System). This experience to date is 660 section 8(d) health and safety studies, and 275 section 8(e) notices of substantial risk. The Office of Regulatory Analysis estimates that EPA is likely to receive 1,000 allegations per year, which would represent about double the submissions to now handled by the contractor, and therefore would cost approximately $50,000 a year.

4. *Enforcement:* (Office of Enforcement) The Office of Enforcement intends to actively enforce this rule. Inspections of section 8(c) files will be conducted in conjunction with inspections performed for other provisions of TSCA and other laws administered by EPA. Present plans to combine inspections means that the rule will have little effect on OE resource allocation.

II. Secondary Impacts

A. *Recordkeeping Changes.* The requirements of this rule will create a new requirement to record and report allegations; however no new positions (jobs) or primary functions should result from meeting those requirements.

B. *Effects on Agency Program Operations.* Little effect, beyond that described above, is expected on Agency operations unless the number of submissions is considerably more than anticipated. Enforcement activities may be increased if inspections uncover widespread compliance problems.

5. Respondent Coordination

During the development of this rule, there have been a number of exchanges with industry representatives. On November 13, 1978, a Work Group meeting was held with representatives from industry (see Public Record in Preamble) at which a draft of the rule was discussed. A public meeting was held on August 15, 1979, to discuss this proposed rule, which has several changes from the previous draft (see Public Record in Preamble). This proposal reflects some comments from that meeting, especially concerning the automatic reporting provision. The conditions requiring automatic reporting will be set after considering comments in response to this proposal. Several contacts with the industry helped establish the probable number of allegations that will be received by industry and the costs to industry [see paragraph 4(I)(A)(2) above]. Furthermore, many telephone calls have been received by OPTS from industry representatives that either provided input or concerned the status of the rule.

Appendix A—Reports Impact Analysis

Estimate of Persons Subject to TSCA Section 8(c)

Introduction

An effort has been made to define, by Standard Industrial Classification (SIC) code, the parameters of the industrial and commercial community which may be affected by the proposed section 8(c) rule. The purpose of this exercise is to examine all industrial categories to determine and list the SIC codes (see Appendix B to Reports Impact Analysis) for those who may manufacture, process, or distribute chemical substances or mixtures as defined in TSCA and may be subject to section 8(c). Under the TSCA definition, a chemical substance includes any naturally occuring substance or combination of substances, such as minerals or cotton. Those who manufacture chemical substances or mixtures, such as organic chemicals, may in large part be readily identifiable within the SIC codes 28 and 2911. However, additional manufacturers, as well as processors and distributors, are spread thoughout industry and commerce. Large segments of industry may include processors; however, in most of those segments, only a small percentage of the production employees can be expected to be involved in the processing of chemicals (as opposed to assembly work and other activities). While the list of industries and SIC codes is reasonably complete and comprehensive, exclusion of an SIC code from the list should not be construed to mean that persons in that code are not manufacturers, processors, or distributors of chemical substances or mixtures. Some SIC codes were eliminated from the list because there was no clear indication from the description in the *Standard Industrial Classification Manual* that the industry might manufacture or process any substances. Other SIC codes were excluded because the industries generally appeared to not be within the jurisdiction of TSCA. The selections were made without consulting industry, and it is expected that comments to the proposed rule and this analysis will improve and validate the selection criteria and result in a more comprehensive listing.

Purpose

This review was conducted to better estimate the potential impact of the proposed section 8(c) rule. Industry has provided estimates to EPA about the number of section 8(c) allegations that are now received annually in a manner that measures the number of allegations received from all sources by the number of industry production employees as follows:

Total Allegations Of All Sorts—Number of Production Employees

An estimate was derived from industry input which concludes that industry annually receives from any source 2–4 allegations for every 1000 production employees. The number of production employees thus becomes a common denominator to estimate the number of allegations that might be subject to recordkeeping and reporting under TSCA section 8(c). The purpose of this study is to estimate the number of production workers who could be expected to be involved in the manufacturing, processing, or wholesale distributing of chemical substances or mixtures.

Assumptions and Procedures

1. The provisions of section 8(c) are to be applied to *all* persons who manufacture, process, or distribute chemical substances or mixtures in commerce except retailers. This will include persons in the chemical and allied products industry; those who distribute those products in commerce; and industries outside the traditional "chemical industry" if their production activities involve the manufacture or processing of "chemical substancers" or "mixtures" as defined by TSCA. TSCA defines chemical substances as including naturally occurring substances such as metals or cotton. Many industrial segments will technically "process" under the definitions of TSCA, and those persons should be subject to the statutory provision for those chemical substances or mixtures which are processed. Persons who solely *use* (do not process) chemical substances or mixtures may generate section 8(c)-type allegations, which may be sent to and then kept by manufacturers, processors, or distributors of those substances or mixtures; but users are not subject to the section 8(c) recordkeeping and reporting provisions.

2. Since the SIC codes are structured around the article produced by the coded industry, we have drawn inferences about the operations involved in making the end product. Processors were selected by judging whether in some way production of the end product might regularly involve processing of chemicals, such as, at a minimum, applying a surface coating. Thus, while the manufacturers of transportation equipment are included on the list, those persons providing transportation services were excluded (SIC 40–48).

3. Industries can be separated into two groups: (a) Group 1, those primarily engaged in manufacturing or processing chemical substances or mixtures, all of whose production employees are expected to be involved in chemical activities, and (b) Group 2, those who may process or distribute chemical substances or mixtures, but only as a small part of their overall operation. Companies in Group 2 may be considered processors or distributors, yet the activities are diverse and chemical processing is expected to be incidental. Therefore, in this review only a portion of the employees were counted to equate their activities with production employees in Group 1. It was estimated that 10% of the employees in Group 2 may be involved in chemical processing during the regular performance of duties. The figure of 10% is very much an estimate of the potential numbers of similarly exposed production workers, and in some cases certain Group 2 industries should have *all* workers counted (e.g., textile mills). In other cases, fewer than 10% of the production workers should be counted. Given these limitations, the 10% figure can be considered a reasonable estimate which is an easily multiplied figure that commentors can consider and then provide more accurate information. This estimate is for the purposes of analyzing the impact of section 8(c) only, and may not apply to other rules under TSCA.

4. The figures for the numbers of production employees and establishments listed in Appendix B were drawn from data provided by the Bureau of Labor Statistics (BLS), DOL, *(Employment and Wages, First Quarter 1975,* PB-292 169, 1979). All employees listed in this BLS study are production workers and all establishments and employees are counted only once, according to the primary SIC code. The data are drawn from information submitted to each state unemployment insurance program. BLS considers these data to be a virtual census of all nonagricultural workers. While the data are drawn from January 1975, the figures are more current than the Department of Commerce *Census of Manufacturers* and most likely approximate the current numbers of establishments and production workers.

5. Due to the structure of the SIC codes, which is based on products not processes, additions to the SIC list were made if it appeared *possible* that the manufacture of those products might involve processing or handling substances according to the TSCA definitions. Since many of the industries may perform a small amount of related processing, only 10% of those workers are counted. Yet, for many large industries, such as automobile manufacturers, the study concluded that 10% may be an overestimate because of the large number of unrelated jobs. Furthermore, counting 100% of the workers in Group 1 probably is an overestimate. Yet, the figures offer a reasonable approximation of the number of employees with work comparable to that of production employees in the chemical industry, and can serve as the number of workers to be substituted in the formula for estimating section 8(c)-type allegations:

Number of allegations from all sources÷1000 Production Workers

Also, the figures for the mining and wholesale trade codes (10–14, 50–51) were only available in 3-digit categories, and therefore include some 4-digit categories that would otherwise not be counted in the study (e.g., Mining Services).

Results

Examination of the *Standard Industrial Classification Manual* resulted in identifying the following groups:

(a) Group 1. 100% employee potential exposure
Number of SIC codes: 15 3-digit, 55 4-digit.
Number or establishments: 39,355.
Number of production workers: 3,174,951.

(b) Group 2. 10% employee potential exposure
Number of SIC codes: 24 3-digit, 308 4-digit.
Number of establishments: 543,075.
Number of production workers: 17,211,586.

The following equation estimates the number of U.S. production workers (Section 8(c) Worker Population) involved in chemical activities:

Group 1+(Group 2)(0.10)=Section 8(c) Worker Population
3,174,951+1,721,159=*4,896,110*

Appendix B—Report Impact Analysis

SIC Categories—100% Exposure

Group I

SIC code	Description	Number of reported units	Number of employees
101	Iron Ores	90	23,396
102	Copper Ores	144	43,473
103	Lead & Zinc Ores	98	7,989
104	Gold Ores & Silver Ore	259	3,953
105	Bauxite & Other Aluminum Ores.	18	468
106	Ferroalloy Ores, Except Vanadium.	43	4,596
109	Miscellaneous Metal Ores	224	8,338
111	Anthracite	146	3,587
121	Bituminous Coal	3,523	197,452
141	Dimension Stone	265	3,597
142	Crushed & Broken Stone	1,498	40,367
144	Sand & Gravel	2,700	32,107
145	Clay, Ceramic and Refractory Minerals.	213	8,279
147	Chemical & Fertilizer Minerals.	202	24,897
149	Miscellaneous Nonmetallic Minerals, Except Fuels.	287	5,067
2261	Finishing Plants—Cotton	276	33,027
2262	Finishing Plants—Man-Made Fiber & Silk.	315	29,544
2269	Finishing Plants Textiles	225	14,502
2611	Pulp Mills	79	15,102
2621	Paper Mills, Except Bldg. Papermills.	433	173,536
2631	Paperboard Mills	237	63,785
2641	Paper Coating & Glazing	445	54,527
2812	Alkalies and Chlorine	73	23,476
2813	Industrial Gases	393	17,344
2816	Inorganic Pigments	115	13,713
2819	Industrial Inorganic Chemicals.	735	99,180
2821	Plastic Materials	590	83,400
2822	Synthetic Rubber	84	15,239
2823	Cellulosic Man-Made Fibers	30	25,076
2824	Synthetic Organic Fibers, Ex. Cellulosic.	76	93,109
2831	Biological Products	225	19,321
2833	Medicinal Chemicals	125	16,368
2841	Soap & Other Detergents	549	38,371
2842	Specialty Cleaning	980	28,060
2843	Surface Active Agents, Finishing Agents etc.	198	6,002
2844	Perfumes, Cosmetics & Other Toilet Preparations.	585	47,738
2851	Paints & Varnishes	1,497	62,861
2861	Gum & Wood Chemicals	139	5,650
2865	Cyclic Crudes & Cyclic Intermediates.	208	33,008
2869	Industrial Organic Chemicals.	415	119,231
2873	Nitrogenous Fertilizers	206	12,315
2874	Phosphatic Fertilizers	139	15,444
2875	Fertilizers, Mixing Only	572	14,180
2891	Adhesives & Sealants	506	12,152
2893	Printing Ink	417	12,152
2895	Carbon Black	33	4,361
2899	Chemicals & Chemical Preparations.	955	36,283
2911	Petroleum Refining	575	155,358
2951	Paving Mixtures & Blocks	625	10,225
2952	Asphalt Felts & Coating	215	16,619
2992	Lubricating Oils & Greases	308	8,023
2999	Products of Petroleum & Coal NEC.	45	2,146
3011	Tires & Inner Tubes	201	129,088
3021	Rubber & Plastic Footwear	102	30,936
3031	Reclaimed Rubber	22	767
3041	Rubber & Plastic Hose	100	18,451
3069	Fabricated Rubber	1,212	107,346
3079	Misc. Plastic Products	7,978	327,331
3111	Leather Tanning & Finishing	468	21,172
3241	Cement, Hydraulic	214	32,680
3274	Lime	106	327,331
3312	Blast Furnaces, Steel Works, & Rolling Mills.	468	21,172
		477	507,079
3313	Electrometallurgical Products.	58	16,999
3331	Primary Smelting & Refining of Copper.	29	17,416
3332	Primary Smelting & Refining of Lead.	19	3,134
3333	Primary Smelting & Refining of Zinc.	15	6,424
3334	Primary Production of Aluminum.	50	32,962
3339	Primary Smelting & Refining of Non-Ferrous Metals NEC.	99	10,298
3471	Electroplating, Plating & Polishing.	3,414	54,491
3479	Coating Engraving & Allied Services.	1,478	28,132
	Total	39,335	3,174,951

SIC Categories—10% Exposure

Group II

SIC code	Description	Number of reported units	Number of employees
131	Crude Petroleum & Natural Gas Liquids.	6,325	145,846
132	Natural Gas	120	4,262
2074	Cottonseed Oil Mills	110	7,730
2075	Soybean Oil Mills	78	9,334
2076	Vegetable Oil Mills	44	2,220
2077	Animal & Marine Oil Mills	430	11,747
221	Broad Woven Fabric Mills, Cotton.	427	158,288
222	Broad Woven Fabric Mills, Man-made Fiber & Silk.	478	101,628
223	Broad Woven Fabric Mills, Wools Including Dying & Finishing.	211	21,520
224	Narrow Fabrics & Other Smallwares Mills.	449	23,199
225	Women's Full Length & Knee Length Hosiery.	284	33,341
2252	Hosiery, Except Women's Full & Knee Length.	401	28,897
2253	Knit Outerwear Mills	1,059	67,102
2254	Knit Underwear Mills	114	32,664
2257	Circular Knit Fabric Mills	376	31,020
2258	Warp Knit Fabric Mills	328	20,370
2259	Knitting Mills, NEC	85	4,458
2271	Woven Carpets & Pads	101	7,281
2272	Tufted Carpets & Rugs	407	43,086
2279	Carpets & Rugs, NEC	59	946
2281	Yarn Spinning Mills	401	73,839
2282	Yarn Texturizing	187	18,585
2283	Yarn Mills, Wool	115	11,488
2284	Thread Mills	79	10,093
2291	Felt Goods, except Woven Felts & Hats.	75	4,107
2292	Lace Goods	101	2,762
2293	Paddings & Upholstry Filling	127	5,726
2294	Processed Waste & Recovered Fiber.	169	6,116
2295	Coated Fiber	191	11,198
2296	Tire Cord & Fiber	29	11,893
2297	Nonwoven Fabrics	32	3,110
2298	Cordage & Twine	170	10,440
2299	Textile Goods, NEC	137	9,903
2311	Men's & Youth's Suits & Coats.	754	92,378
2321	Men's Nightwear	838	111,349
2322	Men's Underwear	94	19,010
2323	Men's Neckwear	259	6,279
2327	Men's Trousers	658	82,552
2328	Men's Work Clothing	471	66,994
2329	Clothing, NEC	676	50,884
2331	Women's Blouses, Waists & Shirts.	884	45,742
2335	Women's Dresses	4,700	156,606
2337	Women's Suits & Skirts	1,577	56,962
2339	Women's NEC	2,292	111,144
2341	Women's Underwear	841	72,179
2342	Brassieres & Girdles	322	34,186
2351	Millinery	153	2,031
2352	Hats & Caps	263	12,620
2361	Girls' Dresses, Blouses	475	24,611
2363	Girls' Coats & Suits	173	7,288
2369	Girls' Outerwear	432	32,162
2371	Fur Goods	772	4,072
2381	Dresses & Work Gloves	159	14,399
2384	Robes & Dressing Gowns	203	7,910
2385	Rain Coats	260	14,038
2386	Leather & Sheep Lined Clothing.	213	5,239
2387	Apparel, Belts	284	8,154
2389	Apparel, NEC	219	5,324
2391	Curtains & Draperies	1,219	24,523
2392	House Furnishings	1,092	37,400
2393	Textile Bags	210	7,918
2394	Canvas & Related Products	980	12,752
2395	Pleating, Decorative & Novelty Stitching.	933	11,854
2396	Automotive Trimmings	635	23,102
2397	Schiffli Machine Embroideries	256	2,952
2399	Fabricated Textile Products, NEC.	625	20,892
2411	Logging Camps	13,055	69,784
2421	Sawmills & Planing Mills	7,308	159,845
2426	Hardwood Dimension & Flooring Mills.	885	25,060
2429	Special Product Sawmills	516	5,713
2431	Millwork	2,472	56,821
2434	Wood Kitchen Cabinets	2,470	33,954
2435	Hardwood Veneer & Plywood	317	22,309
2436	Softwood Veneer & Plywood	245	35,898
2439	Wood Containers	488	6,685
2511	Wood Household Furniture	2,058	124,707
2512	Wood Household Furniture Upholstery.	1,514	60,226
2514	Metal Household Furniture	507	27,309
2515	Mattresses & Box Springs	1,048	31,156
2517	Wood Television, Radio Phonograph & Sewing Machine Cabinets.	113	10,948
2519	Household Furniture NEC	146	2,945
2521	Wood Office Furniture	202	11,903
2522	Metal Office Furniture	208	30,159
2531	Public Building & Related Furniture.	372	24,074
2541	Wood Partitions, Shelving, Lockers, etc.	537	26,343
2542	Metal Partitions & Shelving	537	24,709
2591	Draping Hardware, Window Blinds & Shades.	581	13,147
2599	Furniture & Fixtures NEC	282	9,764
2642	Envelopes	260	23,457

SIC code	Description	Number of reported units	Number of employees
2643	Bags, Except Textile Bags	578	46,475
2645	Die-Cut Paper Paperboard & Cardboard.	423	16,869
2646	Pressed & Molded Pulp Goods.	54	4,535
2647	Sanitary Paper Products	102	19,344
2648	Stationery, Tablets and Related Products.	88	5,707
2649	Converted Paper and Paperboard NEC.	524	28,302
2651	Folding Paperboard Boxes	587	41,827
2652	Set-Up Paperboard Boxes	340	12,916
2653	Corrugated & Solid Fiber Boxes.	1,349	95,713
2654	Sanitary Food Containers	180	25,833
2655	Fiber Cans, Tubes, Drums & Similar Products.	299	18,643
2661	Building Paper & Building Board Mills.	108	11,633
2711	Newspapers: Publishing, Publishing & Printing.	8,527	382,066
2721	Periodicals, Publishing	2,832	69,081
2731	Books, Publishing & Printing	1,585	67,643
2732	Book Printing	215	27,681
2741	Misc. Publishing	2,276	38,231
2751	Commercial Printing	11,489	164,256
2752	Commercial Printing Lithographic.	9,229	168,521
2753	Engraving & Plate Printing	595	11,091
2754	Commercial Printing Gravure.	124	8,350
2879	Pesticides & Agricultural Chemicals NEC.	357	22,027
3131	Boot & Shoe Cut Stock	263	9,705
3142	House Slippers	102	8,994
3143	Men's Footwear	241	59,111
3144	Women's Footwear	324	68,434
3149	Footwear, except Rubber NEC.	243	22,983
3151	Leather Gloves & Mittens	108	4,817
3161	Luggage	277	14,178
3171	Women's Handbags & Purses.	442	16,926
3172	Personal Leather Goods Ex. Women's Purses.	308	10,835
3199	Leather Goods, NEC	405	8,143
3211	Flat Glass	86	18,164
3221	Glass Containers	139	69,527
3229	Pressed & Blown Glass	327	56,500
3231	Glass Products	883	35,903
3251	Brick & Structural Clay Tile	371	19,045
3253	Ceramic Wall & Floor Tile	98	8,990
3255	Clay Refractories	157	13,579
3259	Structural Clay Products	124	6,478
3261	Vitreous China Plumbing Fixtures.	80	8,817
3262	Vitreous China Table and Kitchen Articles.	21	5,341
3263	Fine Earthenware	12	5,124
3264	Porcelain Electrical Supplies	79	12,115
3269	Pottery Products NEC	582	13,370
3271	Concrete Brick & Block	1,388	21,952
3272	Concrete Products	3,552	66,165
3273	Ready-Mixed Concrete	4,212	75,900
3275	Gypsum Products	128	13,709
3281	Cut Stone & Stone Products	937	12,435
3291	Abrasive Products	366	26,318
3292	Asbestos Products	165	24,487
3293	Gaskets, Packing & Sealing	382	25,409
3295	Minerals & Earth, Ground	455	14,449
3296	Mineral Wools	158	23,120
3297	Nonclay Refractories	98	11,237
3299	Nonmetallic Mineral Products	417	5,711
3315	Steel Wire, Nails	192	21,250
3316	Cold Rolled Steel Sheet Strip & Bars.	184	18,843
3317	Steel Pipe & Tubes	208	29,414
3321	Gray Iron Foundries	963	156,225
3322	Malleable Iron Foundries	72	23,186
3324	Steel Investment Foundries	58	11,306
3325	Steel Foundries NEC	242	57,309
3341	Secondary Smelting & Refining of Nonferrous Metals.	376	19,309
3351	Rolling, Drawing & Extruding of Copper.	158	30,632
3353	Aluminum Sheet, Plate, & Foil.	85	30,350
3354	Aluminum Extruded Products.	163	28,981
3355	Aluminum Rolling & Drawing NEC.	24	5,252
3356	Rolling, Drawing & Extruding of Nonferrous Metals.	177	18,762
3357	Drawing & Insulating of Nonferrous Wire.	363	82,609
3361	Aluminum Foundries	966	45,656
3362	Brass, Bronze, Copper, Copper Base Alloy Foundries.	560	20,170
3369	Nonferrous Foundries NEC	425	16,006
3398	Metal Heat Treating	449	10,911
3399	Primary Metal Products NEC.	237	8,749
3411	Metal Cans	421	69,620
3412	Metal Shipping Barrels - Drums etc.	167	12,237
3421	Cutlery	148	15,348
3423	Hand & Edge Tools, Ex. Tools.	743	49,821
3425	Hand Saw & Saw Blades	119	7,655
3429	Hardware NEC	1,073	85,480
3431	Enameled Iron Metal Sanitary Ware.	133	9,475
3432	Plumbing Fixture Fittings & Trim.	243	20,417
3433	Heating Equipment Except Electric Warm Air Furnace.	379	29,217
3441	Fabricated Structural Metal	2,078	106,912
3442	Metal Doors, Sash, Frames, etc.	1,882	62,464
3443	Fabricated Plate Work	1,689	149,457
3444	Sheet Metal Work	3,996	84,800
3446	Architectural & Ornamental Metal Work.	2,000	30,665
3448	Prefabricated Metal Building & Components.	448	18,456
3449	Misc. Metal Work	333	9,734
3451	Screw Machine Products	1,881	49,076
3452	Bolts, Screws, Rivets & Washers.	721	56,526
3462	Metal Forgings & Stampings	497	55,821
3463	Nonferrous	33	4,861
3465	Automotive Stampings	284	68,712
3466	Crowns & Closures	37	5,057
3469	Metal Stampings NEC	2,260	110,831
3493	Steel Springs Except Wire	163	7,962
3494	Valves & Pipe Fittings	783	92,307
3495	Wire Springs	258	13,646
3496	Misc. Fabricated Wire Products.	1,201	46,026
3497	Metal Foil & Leaf	48	2,461
3498	Fabricated Pipe	479	23,912
3499	Fabricated Metal Products, NEC.	1,238	40,436
3511	Steam, Gas, & Hydraulic Turbines & Generators.	83	49,238
3519	Internal Combustion Engines.	155	75,792
3523	Farm Machinery & Equipment.	1,624	159,829
3524	Garden Tractors & Garden Equipment.	135	20,556
3531	Construction Machinery & Equipment.	701	153,975
3532	Mining Machinery & Equipment.	254	29,536
3533	Oil Field Machinery & Equipment.	311	57,947
3534	Elevators & Moving Stairways.	167	14,647
3535	Conveyors & Conveying Equipment.	504	28,723
3536	Hoists	252	28,806
3537	Industrial Trucks, Tractors, Trailers.	398	34,383
3541	Machine Tools, Metal Cutting	878	70,768
3542	Machine Tools, Metal Forming.	339	28,055
3544	Special Dies & Tools	7,289	119,176
3545	Machine Tool Accessories	1,661	59,678
3546	Power Driven Hand Tools	127	22,995
3547	Rolling Mills Machinery & Equipment.	56	14,469
3549	Metal Working Machinery NEC.	199	13,946
3551	Food Products Machinery	751	43,823
3552	Textile Machinery	621	36,178
3553	Wood Working Machinery	296	13,150
3554	Paper Industries Machinery	211	18,928
3555	Printing Trades Machinery & Equipment.	619	30,315
3559	Special Industry Machinery, NEC.	1,051	57,583
3561	Pumps & Pumping Equipment.	506	57,010
3562	Ball & Roller Bearings	183	59,279
3563	Air & Gas Compressors	143	28,714
3564	Blowers & Exhaust Fans	502	34,389
3565	Industrial Patterns	968	10,002
3566	Speed Changers & Industrial High Speed Drives.	267	25,113
3567	Industrial Process Furnaces & Ovens.	327	19,869
3568	Mechanical Power Transmission Engines.	160	24,083
3569	General Ind. Machinery & Equipment.	836	46,211
3572	Typewriters	32	17,975
3573	Electronic Computing & Equipment.	738	219,277
3574	Calculating and Accounting Machines.	68	31,913
3576	Scales and Balances, Except Laboratory.	88	7,254
3579	Office Machines NEC	199	25,448
3581	Automatic Merchandising Machines.	101	8,355
3582	Commercial Laundry, & Dry Cleaning.	91	5,764
3585	Air Conditioning & Industrial-Commercial Refrigeration Equipment.	658	110,564
3586	Measuring and Dispensing Pumps.	29	5,715
3589	Service Industry Machines	692	31,868
3592	Carburetors, Pistons, Piston Rings, and Valves.	218	30,947
3599	Machinery, except Electrical NEC.	14,408	202,011
3612	Power, Distribution, & Specialty Transformers.	388	58,474
3613	Switchgear and Switchboard Apparatus.	588	68,954
3621	Motors and Generators	437	117,906
3622	Industrial Controls	823	62,587
3623	Welding Apparatus, Electric	157	17,528
3624	Carbon and Graphite Products.	76	14,233
3629	Electrical Industrial Apparatus, NEC.	148	11,811
3631	Household Cooking Equipment.	85	18,704
3632	Household Refrigerators & Home and Farm Freezers.	54	34,278
3633	Household Laundry Equipment.	36	20,100
3634	Electric Housewares & Fans	286	46,188
3635	Household Vacuum Cleaners	32	9,068
3636	Sewing Machines	84	8,365
3639	Household Appliances NEC	87	14,793
3641	Electric Lamps	251	39,026
3643	Current Carrying Wiring Devices.	528	73,622
3644	Noncurrent Carrying Wiring Devices.	204	22,362
3645	Residential Electric Lighting Fixtures.	666	19,684
3646	Commercial, Industrial, Institutional Electrical Lighting Fixtures.	191	15,376
3647	Vehicular Lighting Equipment	50	12,603
3648	Lighting Equipment NEC	137	6,294
3651	Radio & TV Receiving Sets	525	87,481
3652	Phono Records & Magnetic Tape.	624	22,187
3661	Telephone & Telegraph Apparatus.	303	164,121
3662	Radio & TV Transmitting Equipment.	1,568	322,595
3671	Radio & TV Receiving Tubes.	40	12,808
3672	Cathode Ray Picture Tubes	67	11,968
3673	Transmitting, Industrial & Special Purpose Electron Tubes.	60	17,213
3674	Semiconductors & Related Devices.	497	126,549
3675	Electronic Capacitors	102	19,181
3676	Resistors, for Electronic Applications.	59	8,344
3677	Electronic Coils, Transformers, etc.	274	16,294
3678	Connectors, for Electronic Applications.	38	2,843

SIC code	Description	Number of reported units	Number of employees
3679	Electronic Components NEC.	2,465	140,145
3691	Storage Batteries	241	25,236
3692	Primary Batteries, Dry and Wet.	72	12,138
3693	X-Ray Equipment	142	17,081
3694	Electrical Equipment for Internal Combustion Engines.	341	62,373
3699	Electrical Equipment NEC	292	11,663
3711	Motor Vehicles and Passenger Car Bodies.	334	347,584
3713	Truck & Bus Bodies	730	45,593
3714	Motor Vehicle Parts & Accessories.	1,719	361,418
3715	Truck Trailers	368	21,856
3721	Aircraft	222	305,564
3724	Aircraft Engines	248	133,864
3728	Aircraft Parts	1,046	98,716
3731	Ship Building & Repair	456	165,901
3732	Boat Building & Repair	1,703	38,401
3743	Railroad Equipment	145	60,482
3751	Motorcycles & Bicycles	250	12,277
3792	Travel Trailers & Campers	1,029	27,820
3799	Transportation Equipment	363	9,083
3811	Engineering Laboratory, Scientific Equipment.	718	65,608
3822	Automatic Controls for Regulating Commercial & Residential Environments.	252	37,623
3824	Totalizing Fluid Meters & Counting Devices.	124	15,017
3825	Instruments for Measuring & Testing Electricity & Electrical Signals.	509	64,062
3829	Measuring & Controlling Devices NEC.	328	17,758
3832	Optical Instruments & Lenses	416	22,495
3841	Surgical & Medical Instruments & Appliances.	542	42,227
3842	Surgical Supplies & Appliances.	1,002	56,178
3843	Dental Equipment	376	15,056
3851	Ophthalmic Equipment	933	37,817
3861	Photo Equipment & Supplies	682	125,209
3873	Watches, Clocks, Clockwork & Supplies.	237	32,628
3911	Jewelry, Precious Metal	1,812	31,315
3914	Silverware, Plated Ware, Stainless Steel.	242	11,528
3915	Jewelers Materials	577	8,826
3931	Musical Instruments	361	25,177
3942	Dolls	262	6,394
3944	Games, Toys, & Children's Vehicles.	696	39,178
3949	Sporting and Athletic Goods, NEC.	1,547	62,662
3951	Pens & Mechanical Pencils	111	9,788
3952	Lead Pencils	154	8,285
3953	Marking Devices	556	8,340
3955	Carbon Paper & Inked Ribbons.	103	4,985
3961	Costume Jewelry	1,341	28,786
3962	Feathers, Plumes, Artificial Trees & Flowers.	291	4,926
3963	Buttons	197	3,849
3964	Needles, Pins, Hooks, & Eyes.	288	16,384
3991	Brooms & Brushes	437	15,899
3993	Signs & Advertising Displays	2,662	41,282
3995	Burial Caskets	420	13,633
3996	Linoleum, Asphalted-Felt-Base Floor Covers.	21	8,134
3999	Manufacturing Industry	2,158	50,145
492	Gas Production & Distribution	1,837	159,390
501	Automotive Vehicles & Automotive Equipment.	27,650	367,253
502	Furniture & Home Furnishings.	9,455	85,967
503	Lumber & Construction Materials.	13,484	145,810
504	Sporting Goods, Toys, & Hobby Goods.	5,002	55,151
505	Metals & Minerals, Except Petroleum.	7,891	126,288
506	Electrical Goods	23,934	356,356
507	Hardware, Plumbing, & Heating Equipment.	18,378	206,792
508	Machinery, Equipment & Supplies.	79,375	1,002,867
509	Miscellaneous Durable Goods.	22,146	193,205
511	Paper & Paper Goods	8,796	116,251
513	Apparel, Piece Goods, & Notions.	17,291	154,027
516	Chemicals & Allied Products	9,626	109,609
517	Petroleum	16,885	225,181
519	Miscellaneous Nondurable Goods.	33,341	313,787
	Total	543,075	17,211,586

[FR Doc. 80-20490 Filed 7-10-80; 8:45 am]

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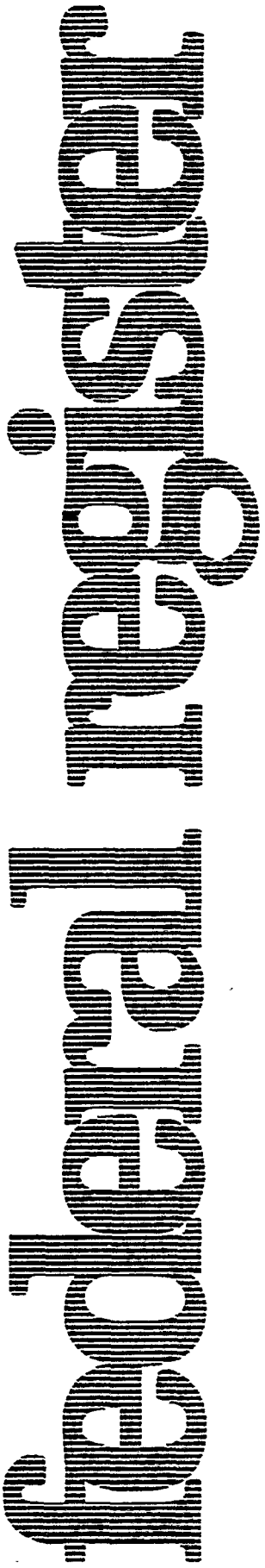

Friday
July 11, 1980

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State

Connecticut:
CT79-2010: April 6, 1979.
CT79-2011: April 6, 1979.
Florida:
FL79-1110: July 20, 1979.
FL80-1064: April 25, 1980.
Louisiana:
LA80-4026: June 13, 1980.
LA80-4039: May 23, 1980.
Maryland:
MD79-3031: November 30, 1979.
Missouri:
MO80-4040: June 13, 1980.
Montana:
MT80-5120: June 27, 1980.
MT80-5121: June 27, 1980.
MT80-5122: June 27, 1980.
New Mexico:
NM79-4103: November 2, 1979.
NM79-4104: November 2, 1979.
Pennsylvania:
PA80-3025: April 11, 1980.
PA80-3029: April 25, 1980.
PA80-3038: May 23, 1980.
South Carolina:
SC80-1047: January 25, 1980.
Texas:
TX80-4001: January 4, 1980.
TX80-4003: January 4, 1980.
TX80-4004: January 4, 1980.
TX80-4006: January 4, 1980.
TX80-4028: April 25, 1980.
TX80-4031: June 6, 1980.
TX80-4033: May 16, 1980.
TX80-4034: June 6, 1980.
TX80-4035: June 20, 1980.
TX80-4036: June 20, 1980.
TX80-4037: May 16, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Michigan
MI80-2017(MI80-2053): March 21, 1980.
Ohio
OH79-2064(OH80-2048): July 6, 1979.
OH78-2148(OH80-2024): November 13, 1978.

Cancellation of General Wage Determination Decisions

The general wage decisions listed below are cancelled. Agencies with construction projects pending to which one of the cancelled decisions would have been applicable should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 29 CFR 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.7(b)(2), the incorporation of one of the cancelled decisions in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

IN77-2070—Grant County, Indiana dated May 13, 1977 in 42 FR 24555—Residential Construction
IN77-2025—Miami County, Indiana dated February 18, 1977 in 42 FR 10198—Residential Construction
IN77-2093—Bartholomew County, Indiana dated May 27, 1977 in 42 FR 27551—Residential Construction
IN77-2012—Jackson County, Indiana dated February 11, 1977 in 42 FR 8913—Residential Construction
IN77-2014—Johnson County, Indiana dated February 11, 1977 in 42 FR 8914—Residential Construction
IN77-2096—Lawrence County, Indiana dated May 27, 1977 in 42 FR 27552—Residential Construction

Signed at Washington, D.C. this 3rd day of July 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

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MODIFICATION PAGE 1

DECISION NO. CT79-2010 - MOD. #12. (44 FR 20913 - April 6, 1979) Fairfield, Litchfield & Windham Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers (Heavy & Highway Construction):					
Greenwich	$10.65	.75	.95		a
Darien & Stamford	11.32	.80	.25		a
Except the Towns of Darien, Greenwich and Stamford	10.90	.75	.75		a
Carpenters (Heavy & Highway Construction):					
Out of the Hartford area in Fairfield Co. Litchfield Co., and Windham Co.	11.70	.90	.65		b
Ironworkers	14.75	1.03	1.45		.10

FOOTNOTES:

a. Percentage of wage wages

b. $1.00 a year not to exceed 10 cents an hour

MODIFICATION PAGE 2

DECISION NO. CT79-2010 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
CLASS 1	$13.70	1.10	1.10	a	.15
CLASS 2	13.51	1.10	1.10	a	.15
CLASS 3	13.11	1.10	1.10	a	.15
CLASS 4	12.87	1.10	1.10	a	.15
CLASS 5	12.68	1.10	1.10	a	.15
CLASS 6	12.45	1.10	1.10	a	.15
CLASS 7	12.19	1.10	1.10	a	.15
CLASS 8	12.10	1.10	1.10	a	.15
CLASS 9	11.22	1.10	1.10	a	.15
CLASS 10	11.66	1.10	1.10	a	.15
CLASS 11	11.09	1.10	1.10	a	.15
CLASS 12	10.65	1.10	1.10	a	.15
CLASS 13	11.58	1.10	1.10	a	.15
Crane with 150' Boom - $.25 extra					
Crane with 200' boom - $.50 extra					

CLASS 1 - Erecting and handling Structural Steel; Front End Loader (7 cy. or over)
CLASS 2 - Piledriver; Power Shovel and Crane; Dragline; Gradall, Trenching Machine; Lighter Derrick; Paver (concrete), Derrick (stiff leg and guy); Steel Pile Sheeting; Koehring Loader (Skooper); Master Mechanic
CLASS 3 - Drill (Joy heavy weight champion or equivalent); Side Boom; Loader (Euclid); Mucking Machine; Pumpcrete; Rock and Earth Boring Machine; Post Hole Digger; & Hammer (vibratory); Central Mix; Combination Hole & Loader (over ½ yd.)
CLASS 4 - Asphalt Spreader
CLASS 5 - Front End Loader (3 yds. or over); Grader; Power Stone Spreader; Combination Hoe and Loader
CLASS 6 - Asphalt Roller; Bulldozer; Carryall; Maintenance Engineer; Concrete Mixer (5 bags and over); Welder
CLASS 7 - Front End Loader (under 3 yds.); Roller; Power Chipper; Fork Lift; Finishing Machine; Asphalt Plant; Power Pavement Breaker; Dinky Machine
CLASS 8 - Compressors; Pump
CLASS 9 - Fireman (high pressure)
CLASS 10 - Well Point System
CLASS 11 - Compressor Battery
CLASS 12 - Oiler
CLASS 13 - Batch Plant; Bulk Cement Plant

DECISION NO. CT79-2010 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey Crew					
Chief of Party	$11.65	1.10	1.10	a	.15
Ass't Chief of Party	10.81	1.10	1.10	a	.15
Instrument Man	9.97	1.10	1.10	a	.15
Rodman & Chainman	7.43	1.10	1.10	a	.15
TRUCK DRIVERS (Building, Heavy and Highway Construction)					
CLASS 1	9.26	1.04	1.10	a	
CLASS 2	9.36	1.04	1.10	a	
CLASS 3	9.46	1.04	1.10	a	
CLASS 4	9.41	1.04	1.10	a	
CLASS 5	9.51	1.04	1.10	a	
CLASS 6	9.56	1.04	1.10	a	
CLASS 7	9.51	1.04	1.10	a	

CLASS 1 - Two Axle Trucks; Helpers
CLASS 2 - Three Axle Trucks; Two Axle Ready Mix
CLASS 3 - Four Axle Trucks; Heavy Duty Trailer-up to 40 Tons
CLASS 4 - Three Axle Ready-Mix
CLASS 5 - Four Axle Ready-Mix; Specialized Earth Moving Equipment other than conventional Type on-the-road Trucks and Semi-Trailer (including Euclids)
CLASS 6 - Heavy Duty Trailer-40 Tons and over
CLASS 7 - Heavy Duty Trailer up to 40 Tons

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 Paid Holidays: A through F and Good Friday

DECISION NO. CT79-2011 - MOD. #15 (44 FR20921 - April 6, 1979) Hartford, Middlesex, New Haven, New London, and Tolland Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers (Heavy and Highway Construction)	$10.90	.75	.75		
Carpenters (Heavy and Highway Construction)	11.70	.90	.65		
Ironworkers	14.75	1.03	1.45		.10

MODIFICATION PAGE 5

DECISION NO. CT79-2011 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (HEAVY & HIGHWAY CONSTRUCTION)		—			
CLASS 1	$13.70	1.10	1.10	a	.15
CLASS 2	13.51	1.10	1.10	a	.15
CLASS 3	13.11	1.10	1.10	a	.15
CLASS 4	12.87	1.10	1.10	a	.15
CLASS 5	12.68	1.10	1.10	a	.15
CLASS 6	12.45	1.10	1.10	a	1.5
CLASS 7	12.19	1.10	1.10	a	.15
CLASS 8	12.10	1.10	1.10	a	.15
CLASS 9	11.22	1.10	1.10	a	.15
CLASS 10	11.66	1.10	1.10	a	.15
CLASS 11	11.09	1.10	1.10	a	.15
CLASS 12	10.65	1.10	1.10	a	.15
CLASS 13	11.58	1.10	1.10	a	.15
Crane with 150' boom - $.25 extra					
Crane with 200 boom - $.50 extra					

CLASS 1 - Erecting and handling Structural Steel; Front End Loader (7 cy. or over)
CLASS 2 - Piledriver; Power shovel and Crane; Dragline; Gradall, Trenching Machine; Lighter Derrick; Paver (concrete), Derrick (stiff leg and guy); Steel Pile Sheeting; Koehring Loader (Skooper); Master Mechanic
CLASS 3 - Drill (Joy heavy weight champion or equivalent); Side Boom; Loader (Euclid); Mucking Machine; Pumpcrete; Rock and Earth Boring Machine; Post Hole Digger; & Hammer (vibratory); Central Mix; Combination Hole & Loader (over ¼ yd.)
CLASS 4 - Asphalt
CLASS 5 - Front End Loader (3 yds. or over); Grader; Power Stone Spreader; Combination Hoe and Loader
CLASS 6 - Asphalt Roller; Bulldozer; Carryall; Maintenance Engineer; Concrete Mixer (5 bags and over); Welder
CLASS 7 - Front End Loader (under 3 yds.); Roller Power Chipper; Fork Lift; Finishing Machine; Asphalt Plant; Power Pavement Breaker; Dinky Machine
CLASS 8 - Compressors; Pump
CLASS 9 - Fireman (high pressure)
CLASS 10 - Well Point System
CLASS 11 - Compressor Battery
CLASS 12 - Oiler
CLASS 13 - Batch Plant; Bulk Cement Plant

MODIFICATION PAGE 6

DECISION NO. CT79-2011 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey crew					
Chief of Party	11.65	1.10	1.10	a	.15
Ass't of Chief of Party	10.81	1.10	1.10	a	.15
Instrument Man	9.97	1.10	1.10	a	.15
Rodman & Chain man	7.43	1.10	1.10	a	.15
TRUCK DRIVERS (Building, Heavy & Highway Construction)					
Class 1	9.26	1.04	1.10	a	
Class 2	9.36	1.04	1.10	a	
Class 3	9.46	1.04	1.10	a	
Class 4	9.41	1.04	1.10	a	
Class 5	9.51	1.04	1.10	a	
Class 6	9.46	1.04	1.10	a	
Class 7	9.56	1.04	1.10	a	

CLASS 1 - Two Axle Trucks; Helpers
CLASS 2 - Three Axle Trucks; Two Axle Ready Mix
CLASS 3 - Four Axle Trucks; Heavy Duty Trailer-up to 40 Tons
CLASS 4 - Three Axle Ready-Mix
CLASS 5 - Four Axle Ready-Mix; Specialized Earth Moving Equipment other htan conventional Type on-the-road Trucks and semi-Trailer (including Euclids)
CLASS 6 - Heavy Duty Trailer-40 Tons and over
CLASS 7 - Heavy Duty Trailer up to 40 Tons

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 Paid Holidays: A through F and Good Friday

DECISION NO. FL79-1110- Mod. #5 (44 FR 42858 - July 20, 1979) Dade County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	10.60	.90	.55		.08
Power Equipment Operators					
GROUP A	12.40	.50	.45		.05
GROUP B	11.58	.50	.45		.05
GROUP C	10.52	.50	.45		.05
GROUP D	9.65	.50	.45		.05
GROUP E	8.49	.50	.45		.05
DECISION NO. FL80-1064 - Mod. #1 (45 FR 28060 - April 25, 1980) Broward County, Florida					
Change:					
Plumbers; Pipefitters:					
Small Commercial (Office bldgs. of 1 or 2 fixtures; and restarts):	9.75	.60	.50		.15
All other Work	12.45	.60	.80		.15

DECISION NO. LA 80-4026 - MOD. #1 (45 FR 40438 - June 13,1980 Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers & stonemasons:					
Zone 1	$12.30	.80	1.15		.31
Carpenters:					
Zone 4:					
Carpenters & piledrivermen	12.35	.50	.60		.06
Zone 7:					
Carpenters & soft floor layers	11.10				
Millwrights	11.85				
Piledrivermen	11.60				
Zone 9:					
Carpenters & soft floor layers	11.10				
Millwrights	11.85				
Piledrivermen	11.60				
Zone 10:					
Carpenters & soft floor layers	11.10	.65	.40		.10
Millwrights	12.00	.65	.40		.10
Piledrivermen	11.60	.65	.40		.10
Cement masons:					
Zone 4	11.555	.69	.40		.09
Electricians:					
Zone 2:					
Electricians	12.80	.45	3%		.02
Cable splicers	13.30	.45	3%		.02
Ironworkers:					
Zone 6	12.88	.60	.65		.05
Laborers:					
Zone 6 - Group 1	8.90	.30	.27		.05
Group 2	9.00	.30	.27		.05
Group 3	9.15	.30	.27		.05
Marble, tile & terrazzo workers & finishers:					
Zone 2 - Tile setters	9.30	.48	.67		.02

DECISION NO. LA80-4026(CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Zone 2 - Group 1	$10.35		.25		.08
Group 2	11.52		.25		.08
Zone 5 - Group 1	9.95				
Group 2	10.45				
Group 3	10.95				
Zone 6 - Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
Plasterers:					
Zone 2	10.50				.01
Zone 4	12.15				.01
Roofers:					
Zone 3:					
Roofers	9.96	.60	.70		.04
Roofer helpers does not use the tools of the trade in removing & disposing of old roofing, stocking & unloading material, hauling materials to the journeymen & sweeping	6.14	.60	.70		.04
Zone 4: Roofers	9.70		.30		
Kettlemen	8.35		.30		
Sheet metal workers:					
Zone 4	12.09	3%+.69	.50		.19
Sprinkler fitters	12.80	.85	1.20		.08
OMIT:					
All rates & classifications for Zone 8 Painters					
ADD:					
Painters:					
Zone 8 - painters	9.55		.25		.08

DECISION NO. LA80-4039 - MOD #1
(45 FR 35136 - May 23, 1980)
Bossier, Caddo & Calcasieu Parishes, Louisiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Elevator Constructors:					
Bossier & Caddo Parishes:					
Mechanics	11.66	1.195	.82	4%+a+b	.035
Helpers	70% JR	1.195	.82	4%+a+b	.035
Ironworkers:					
Calcasieu Parish	12.88	.60	.65		.05
Painters:					
Bossier & Caddo Parishes:					
Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
Plumbers & Pipefitters:					
Calcasieu Parish	13.73	.67	.72		.08
Sheet Metal Workers:					
Bossier & Caddo Parishes	7.74	3%+.67			.08
Sprinkler fitters	12.80	.85	1.20		.08
Tile setters:					
Calcasieu Parish	9.30	.48	.67		.02

DECISION NO. MD79-3031-Mod. # 5
(44 R69110- November 30, 1979)
Counties of Anne Arundel (excluding the D.C. Training School), Baltimore, Baltimore City Maryland, and for Heavy Construction Projects in Harford and Howard Counties, Maryland

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.95	.85	.95		.02
Bricklayers	12.13	.90	.75		.07
Electricians					
Zone 1 - From Baltimore City Hall to 25 miles	12.40	.80	3% + 1.20		.5%
Zone 2 - Over 25 miles to 45 miles from Baltimore City Hall	12.65	.80	3% + 1.20		.5%
Zone 3 - Over 45 miles from Baltimore City Hall	12.90	.80	3% + 1.20		.5%
Line Construction:					
Zone 1 - From Baltimore City Hall to 25 miles:					
Lineman, cable splicers, digging and equipment operator	13.70	.70	3%		
Winch trucks & trucks with pole or steel handling	9.18	.70	3%		
Trucks without winch	8.56	.70	3%		
Groundman	8.63	.70	3%		
Zone 2 - 25 to 45 miles from Baltimore City Hall:					
Lineman, cable splicers, digging and equipment operator	13.95	.70	3%		
Winch trucks & trucks with pole or steel handling	9.43	.70	3%		
Truck without winch	8.81	.70	3%		
Groundman	8.88	.70	3%		
Zone 3 - Over 45 miles from Baltimore City Hall					
Lineman, cable splicers, digging and equipment operator	14.20	.70	3%		
Winch trucks & trucks with pole or steel handling	9.68	.70	3%		
Truck without winch	9.06	.70	3%		
Groundman	9.13	.70	3%		
Plasterers	11.60	.60	.50		
Sprinkler fitters (Baltimore City to within a 10 mile radus)	13.40	.85	1.20		.05
Tile and Terrazzo Workers	10.01	.90	.50		.04

DECISION #MO80-4040 - Mod. #2
(45 FR 40418 - June 13, 1980)
Pulaski County, Missouri

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Brush & roller	$10.25	1.00	.70	.50	
Taping, paperhanging & floor work	10.75	1.00	.70	.50	
Spray, structural steel and sandblasting	11.50	1.00	.70	.50	

MODIFICATION PAGE 13

DECISION #MT80-5120 Mod # 1
(45 FR 43598 - June 27, 1980)
STATEWIDE, MONTANA

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Area 1	$14.35	.70	.50+3%		½%
Area 2					
Electricians	14.22	.70	.50+3%		½%
Cable Splicers	14.67	.70	.50+3%		½%
Area 4	13.20	.70	.50+3%		½%
Area 6	11.47	.70	.50+3%		½%
Area 7					
Electricians	13.65	.70	.50+3%		½%
Cable Splicers	14.33	.70	.50+3%		½%
Area 8	12.70	.70	.50+3%		½%
Area 9	12.30	.70	.50+3%		½%
LABORERS:					
(See Attached)					
LINE CONSTRUCTION:					
(Change wording in 2nd jurisdiction from Remaining Counties to: Statewide, except Flathead, Lake, and Lincoln Counties.)					
Groundman	9.23	.45	.50+3%		½%
PAINTERS:					
(Jurisdiction of Area 1 and Area 5 should be combined to form Area 1.)					
Area 1 (fringe only)		.51			
Area 4					
Brush	10.99	.69	.40		1%
Paperhanger, Brush on Steel	11.49	.69	.40		1%
Spraying; Sandblasting	13.24	.69	.40		1%

MODIFICATION PAGE 14

DECISION #MT80-5120 Mod #1 (cont'd)

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 9.30	.70	.60	.20	.05
GROUP 2	9.96	.70	.60	.20	.05
GROUP 3	10.10	.70	.60	.20	.05
GROUP 4	10.80	.70	.60	.20	.05

GROUP 1: Axeman; Carpenter Tender; Car and Truck Loaders, Scissorman; Chuck Tender and Nipper (above ground); Cosmolene Applying and Removing; Dumpman (Spotter); Fence Erector and Installer (includes the installation and errection of fences, guard rails, median rails, reference posts, right-of-way markers and guide posts); Form Stripper; General Laborer - Heavy Highway, Highway Bridge and Structure, Crusher and Batch Plant Laborers; Heater Tender (not covered by joint board decision - such as radiant type of butane fire, without blowers or fans - General Laborers scale); Landscape Laborer; Riprap Helper; Stake Jumper for Equipment; Sandblaster Tail Hoseman, Pot Tender; Sod Cutter, Hand Operated (General Laborers); Tool Checker; Tool Houseman.

GROUP 2: Burning Bar; Cement Mason Tender; Caisson Workers (Free Air); Cement Handlers; Choker Setter; Concrete Laborers (wet or dry) Bucketmen and Signalmen; Curb Machine; Dumpman (Grade Man); Form Setter; Hand Faller; Jackhammer, Pavement Breaker, Wagon Driller, Concrete Vibrator, Mechanical Tamper Vibrating Roller, Hand Steered and Other Power Tools; Nozzleman - Air Water, Gunite and Placo Machine; Concrete or Asphalt Saws; Pipelayer (all types) Laser Equipment Operator; Pipewrapper; Posthole Digger (Power Auger); Power Saw (Bucking); Powderman Helper; Power Driven Wheelbarrow; Rigger; Riprapper; Spike Driver, Single or Dual or Hand; Switchman; Tar Pot Operator.

GROUP 3: Asphalt Raker; Concrete Vibrator (5" and over); Drills, Air Tract Self Propelled, Cat or Truck mounted Air Operated Drills; Drills, Air Tract with Dual Masts; Drills, Air Tract, Self Propelled Mustang Type and similar; Equipment Handler; High Scaler; High Pressure Machine Nozzleman; Power Saw (Falling); Sandblaster.

GROUP 4: Core Drill Operator; Grade Setter; Powderman; Welder, Cutting Torch and Air Arc.

DECISION #MT80-5121 Mod #1
(45 PR 43608 - June 27, 1980
STATEWIDE, MONTANA

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Area 9					
Carpenters	$11.38	.85	1.00		.04
Millwrights and Piledrivermen	11.88	.85	1.00		.04
Electricians:					
Area 2					
Electricians	14.22	.70	.75+3%		½%
Cable Splicers	14.67	.70	.75+3%		½%
Area 3	11.47		3%		½%
Area 4					
Contracts under $75,000					
Electricians	13.20	.70	.75+3%		½%
Cable Splicers	13.86	.70	.75+3%		½%
Contracts over $75,000					
Electricians	14.35	.70	.75+3%		½%
Cable Splicers	15.06	.70	.75+3%		½%
Area 6					
Electricians	14.35	.70	.75+3%		½%
Cable Splicers	15.06	.70	.75+3%		½%
Area 8					
Electricians	12.70	.55	.50+3%		½%
Area 9					
Electricians	12.30	.50	.75+3%		½%
LABORERS:					
Beaverhead, deer Lodge, Madison, Powell, and that portion of Jefferson Co. within the territorial limits of Districts #2.					
Group 1	9.36	.70	.60	.20	.05
Group 2	9.56	.70	.60	.20	.05
Group 3	9.61	.70	.60	.20	.05
Group 4	9.86	.70	.60	.20	.05
Group 5	9.96	.70	.60	.20	.05

DECISION #MT80-5121 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Broadwater, Lewis & Clark, Meagher, north half of Jefferson Co. including the city of Boulder; that portion of Powell Co. lying east of a north-south line at the west edge of the Town of Ellison.					
Group 1	$9.59	.70	.60	.20	.05
Group 2	9.75	.70	.60	.20	.05
Group 3	9.84	.70	.60	.20	.05
Group 4	10.09	.70	.60	.20	.05
Group 5	10.19	.70	.60	.20	.05
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Pondera, Teton, and Toole Counties.					
Group 1	9.80	.70	.60	.20	.05
Group 2	9.96	.70	.60	.20	.05
Group 3	10.05	.70	.60	.20	.05
Group 4	10.30	.70	.60	.20	.05
Group 5	10.40	.70	.60	.20	.05
Broadwater, (that portion lying south of an east-west line north of the city of Toston), Gallatin, Madison, (that portion lying east of the Gravely Mountain Range), Park, Sweetgrass, and Wheatland Counties.					
Group 1	9.33	.70	.60	.20	.05
Group 2	9.49	.70	.60	.20	.05
Group 3	9.59	.70	.60	.20	.05
Group 4	9.83	.70	.60	.20	.05
Group 5	9.93	.70	.60	.20	.05

DECISION #MT80-5121 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Area 2					
Brush	$10.99	.69	.40		1%
Brush on Steel; Paperhanger	11.49	.69	.40		1%
Sandblasting; Spraying	13.24	.69	.40		1%
ADD:					
LINE CONSTRUCTION					
Flathead, Lake, and Lincoln Counties					
All work for power utilities, all highway lighting, street lighting and motor traffic controlling.					
Lineman	12.32	.45	3%+.50		½%
Cable Splicer	13.71	.45	3%+.50		½%
Pole Sprayer	10.95	.45	3%+.50		½%
Line Equipment Operators	10.50	.45	3%+.50		½%
Powderman, Jackhammerman, Compressorman	9.11	.45	3%+.50		½%
Groundman	8.54	.45	3%+.50		½%
Tree Trimmer	11.35	.45	3%+.50		½%
Statewide, except Lake, Lincoln, and Flathead					
On jobs over 69 K. V. and all work on highway lighting and traffic control systems					
Lineman, Pole Sprayer	12.90	.45	3%+.50		½%
Cable Splicer	13.80	.45	3%+.50		½%
Line Equipment Operator; Powderman	11.40	.45	3%+.50		½%
Groundman	9.23	.45	3%+.50		½%

DECISION #MT80-5122 Mod #1
(45 FR 43624 - June 27, 1980

MONTANA:
Counties: Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow, and Valley Counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Area 7					
Carpenter	$11.38	.85	1.00		.04
Millwrights and Piledrivermen	11.88	.85	1.00		.04
ELECTRICIANS:					
Area 4					
Electricians	13.65	.70	.50+3%		½%
Cable Splicers	14.33	.70	.50+3%		½%
PAINTERS:					
Brush	10.99	.69	.40		1%
Paperhanger, Brush on Steel	11.49	.69	.40		1%
Spraying; Sandblasting	13.24	.69	.40		1%
LABORERS:					
Cascade and Glacier Cos.					
Group 1	9.80	.70	.60	.20	.05
Group 2	9.96	.70	.60	.20	.05
Group 3	10.05	.70	.60	.20	.05
Group 4	10.30	.70	.60	.20	.05
Group 5	10.40	.70	.60	.20	.05
Gallatin County					
Group 1	9.33	.70	.60	.20	.05
Group 2	9.49	.70	.60	.20	.05
Group 3	9.59	.70	.60	.20	.05
Group 4	9.83	.70	.60	.20	.05
Group 5	9.93	.70	.60	.20	.05
Deer Lodge & Silver Bow Counties					
Group 1	9.36	.70	.60	.20	.05
Group 2	9.56	.70	.60	.20	.05
Group 3	9.61	.70	.60	.20	.05
Group 4	9.86	.70	.60	.20	.05
Group 5	9.96	.70	.60	.20	.05

DECISION #MT80-5122 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
ELECTRICIANS:					
Area 5 (Gallatin Co.) Electricians	$12.70	.55	.50+3%		½%
MARBLE MASONS:					
Area 5 (Silver Bow Co.) Marble Masons	12.45		.55		
Area 6 (Deer Lodge) Marble Masons	12.40		.55		
SHEET METAL WORKERS:					
Area 4 (Add Gallatin County to Area 4)					

DECISION NO. NM79-4103 - Mod. #5
44 FR 63443 - November 2, 1979
Statewide, New Mexico

CHANGE DESCRIPTION OF WORK TO READ "General Building and Heavy Engineering construction shall include the construction, alteration, repair and demolition of buildings, including residential buildings, office buildings, warehouses, industrial and commercial buildings, institutional and public buildings, and all airconditioning, conduit, heating and other mechanical and electrical works and site preparation for building or heavy engineering projects under this classification; stadia; and shall include electrical, gas, water, sewer lines, and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure; and include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kilns, silos, shafts and tunnels (other than highway shafts and tunnels), hydroelectric projects; and well drilling, telephone and electrical transmission lines which are part of general building and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles, (ALSO INCLUDING RESIDENTIAL PROJECTS IN SANTA FE, BERNALILLO, RIO ARRIBA, TAOS, SANDOVAL AND VALENCIA COUNTIES), BUT DOES NOT INCLUDE HEAVY CONSTRUCTION ON THE NAVAJO INDIAN RESERVATION."

DECISION NO. NM79-4104 - Mod. #3
44 FR 63456 - November 2, 1979
Statewide, New Mexico

CHANGE DESCRIPTION OF WORK TO READ "Street, highway, utility and light engineering construction shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels and grade separations involving highways; parks; golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including lingings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling, telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, except on the Navajo Indian Reservation.

DECISION NO. PA80-3025 - MOD. #2 (45 FR 25015 - April 11, 1980) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CEMENT MASONS:					
Adams County	$11.33	.80	.80		
GLAZIERS	10.81	.60	.60		.01
ELECTRICIANS:					
Franklin, Carrol, Monogham and Fairview Twps. in York County	12.46	.65	3%+.67		½%
PLASTERERS:					
Adams County	10.31	.80	.80		.01
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS:					
Adams County	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08
TRUCK DRIVERS:					
Truck Drivers, Building Pick-ups, dump, service trucks, flat trucks, to and including 2 highway license plates	9.47	d	e		
Transit mix, winch trucks, tractors all types euclids, ross lumber and over 2 plates	9.72	d	e		

Footnotes:

d. Employer contributes $93.03 per month to a Health & Welfare Fund.

e. Employer contributes $57.89 per month to a pension fund.

DECISION NO. PA80-3029 - MOD. NO. 1 (45 FR 28069 - April 25, 1980) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
BRICKLAYERS & STONEMASONS	$11.07	.60	.57		.01
CEMENT MASONS:					
West of Rte. 501	11.53	.70	.70		
East of Rte. 501	10.79		1.65		
ELECTRICIANS:					
That portion of Lebanon County that is North and West of Interstate Route 81, including all of the Fort Indiantown Gap Military Reservation	12.46	.65	3%+.67		½ of 1%
That portion of Lebanon County which extends South and East of Interstate Route 81	10.84	.65	3%+.67		½ of 1%
GLAZIERS:					
Remainder of County	10.81	.60	.60		.01
GENERAL LABORERS	7.70	.45	.50		
Operator of Jackhammer, paving breaking and other pnematic, electrical and mechanical tools, laying of all clay, terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for sam, wagon drill operator, cofferdam (below 10') tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders scaffold builders and removal of power buggies	7.80	.45	.50		

DECISION NO. PA80-3029 - (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MILLWRIGHTS	$13.52	.60	.70		.05
PAINTERS:					
East of Route 72					
Brush	10.25	.80	.95		
Structural Steel and Spray	11.30	.80	.95		
Highway & Bridge	11.70	.80	.95		
PLASTERERS:					
East of Rte. 501	10.81		1.65		
West of Rte. 501	10.31	.80	.80		.01
POWER EQUIPMENT OPERATORS:					
Group 1	13.19	7.9%	10.3%	a	1.8%
Group 2	12.90	7.9%	10.3%	a	1.8%
Group 3	12.03	7.9%	10.3%	a	1.8%
Group 4	11.26	7.9%	10.3%	a	1.8%
Group 5	10.79	7.9%	10.3%	a	1.8%
Group 6	9.88	7.9%	10.3%	a	1.8%
Group 7	13.44	7.9%	10.3%	a	1.8%
Group 7-A	13.69	7.9%	10.3%	a	1.8%
Group 7-B	13.93	7.9%	10.3%	a	1.8%
PLUMBERS & STEAMFITTERS:					
West of Rte. 501	11.80	1.00	1.00		.12
East of Rte. 501	13.23	.85	1.40		.14
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08
TERRAZZO WORKERS	11.15	.60	.57		
TILE SETTERS	11.15	.60	.57		
TRUCK DRIVERS:					
Truck Drivers, Building Pick-ups, dump, service trucks, flat trucks, to and including 2 highway license plates	9.47	f	g		
Transit mix, winch trucks, tractors all types euclids, roll lumber and over 2 plates	9.72	f	g		

DECISION NO. PA80-3029 - (Cont'd)

Footnotes:

f. Employer contributes $93.03 per month to a Health & Welfare Fund.

g. Employer contributes $57.89 per month to a pension fund.

DECISION NO. PA80-3038 MOD. NO. 1 (45 FR 35148 - May 23, 1980) Lancaster County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS					
That portion northwest of a line extending from the Susquehanna River to the intersection of State Highways 441 and 241 along 241 to the Borough of Elizabethtown around the limits of Elizabethtown on the west and north side, but including the Masonic Homes in Elizabethtown continuing along State Highway 241 to Lebanon County and that portion north of the Pennsylvania Turnpike, but including all building on the turnpike, from Lebanon County line West Cocalico township	12.46	.65	3%+.67		% of 1%
GLAZIERS	10.81	.60	.60		.01
PAINTERS:					
Remainder of County:					
Brush	10.25	.80	.95		
Steel	11.30	.80	.95		
Spray	11.30	.80	.95		
Roller	10.25	.80	.95		
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08

MODIFICATION PAGE 25

Decision No. SC80-1047-Mod.#1
(45 FR 6310 - January 25, 1980)
Statewide, South Carolina

Change:
Description of work to read:
Highway Construction projects (excluding tunnels, Building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

MODIFICATION PAGE 26

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4001 - MOD. #5 (45 FR 1376 - January 4, 1980) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Carpenters:					
Zone 2 - Carpenters	$11.85	.48	.50		.10
Millwrights	12.35	.48	.50		.10
Asbestos workers	11.95	.80	1.25		.02
Ironworkers - Zone 1	11.45	.55	1.40		.10
Power equipment operators:					
Group 1	11.00	.65	.50		.10
Group 2	10.50	.65	.50		.10
Group 3	8.55	.65	.50		.10
DECISION NO. TX80-4003 - MOD. #5 (45 FR 1380 - January 4, 1980) Jefferson & Orange Cos., Texas					
CHANGE:					
Carpenters: Residential construction of not more than 2 units & condominium townhouses of not more than 6 units excluding all apartment construction & multiple buildings for rental purposes	11.99	.55	.45		
Plasterers	13.50	.92	.45		.02
Plumbers	12.26	.65	.75		.03

DECISION NO. TX80-4003 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet metal workers:					
Commercial	$12.67	3%+.58	.55		.14
Work on a single family dwelling or multiple family housing unit less than 3 stories in height where each individual family apartment is individually conditioned by a separate & independent unit or system	8.235	3%+.58	.55		.14
DECISION NO. TX80-4004 - MOD. #6 (45 FR 1383 - January 4, 1980) Wichita County, Texas					
CHANGE:					
Carpenters:					
Carpenters	11.85	.48	.50		.10
Millwrights	12.35	.48	.50		.10
Cement masons	10.94				
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
Laborers:					
Group 1	6.65	.30	.27		
Group 2	6.78	.30	.27		
Group 3	6.90	.30	.27		
Group 4	7.15	.30	.27		
Power equipment operators					
Group 1	9.625	.65	.625		.15
Group 2	10.525	.65	.625		.15
Group 3	10.925	.65	.625		.15
Sheet metal workers	12.29				.09

DECISION NO. TX80-4006 - MOD. #5 (45 FR 1388 - January 4, 1980) Travis County, Texas	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Cement masons	$10.79	.60	.55		
Painters:					
Group 1	10.30				
Group 2	10.55				
Group 3	10.80				
DECISION NO. TX80-4028 - MOD. #3 (45 FR 28073 - April 25, 1980) Galveston & Harris Cos., Texas					
CHANGE:					
Glaziers	13.59	.67	.675		.02
Lathers (Harris Co. only)	13.92	.60	.35		.03
Plasterers	13.50	.92	.45		.02
Power equipment operators:					
Group 1	12.94	.75	1.25		.07
Group 2	11.08	.75	1.25		.07
Group 3	10.45	.75	1.25		.07
Group 4	10.24	.75	1.25		.07
DECISION NO. TX80-4031 - MOD. #2 (45 FR 38250 - June 6, 1980) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
CHANGE:					
Building Construction:					
Cement masons	10.79	.60	.55		
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4033 - MOD. #2 (45 FR 32544 - May 16, 1980) Bowie County, Texas					
CHANGE:					
Elevator constructors	$11.14	1.195	.82	4%+a+b	.035
Elevator constructors' helpers	70%JR	1.195	.82	4%+a+b	.035
DECISION NO. TX80-4034 - MOD. #1 (45 FR 38255 - June 6, 1980) Brazos County, Texas					
CHANGE:					
Carpenters	11.80				
Plasterers	13.50	.92	.45		.02
Power equipment operators:					
Group 1	12.94	.75	1.25		.07
Group 2	11.08	.75	1.25		.07
Group 3	10.45	.75	1.25		.07
Group 4	10.24	.75	1.25		.07
DECISION NO. TX80-4035 - MOD. #1 (45 FR 41832 - June 20, 1980) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
CHANGE:					
Carpenters:					
Zone 2 - Carpenters	11.45	.70	.55		.08
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
Sheet metal workers:					
Zone 2	12.29				.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4036 - MOD. #1 (45 FR 41836 - June 20, 1980) Ector & Midland Cos., Texas					
CHANGE:					
Asbestos workers	$11.95	.80	1.25		.02
Bricklayers & stonemasons	10.70	.57	.30		.03
Carpenters	11.08				.07
Plumbers & pipefitters					
Zone 1	11.25	.45	.55		.02
Zone 2	11.35	.45	.55		.02
Zone 3	11.45	.45	.55		.02
Zone 4	11.75	.45	.55		.02
DECISION NO. TX80-4037 - MOD. #1 (45 FR 32545 - May 16, 1980) Lubbock County, Texas					
CHANGE:					
Asbestos workers	11.95	.80	1.25		.02
Bricklayers & stonemasons	10.70	.57	.30		.03
Laborers:					
Group 1	6.21	.30	.27		
Group 2	6.48	.30	.27		
Group 3	6.41	.30	.27		
Group 4	6.56	.30	.27		
Group 5	6.81	.30	.27		
Power equipment operators:					
Group 1	9.625	.65	.625		.15
Group 2	10.525	.65	.625		.15
Group 3	10.925	.65	.625		.15

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Kent
DECISION NUMBER: MI80-2053 DATE: Date of Publication
Supersedes Decision No. MI80-2017 dated March 21, 1980 in 45 FR 18653.
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 7.50				
BOILERMAKERS	11.07	1.10	1.20	1.50	.03
BRICKLAYERS & STONEMASONS	7.45				
CARPENTERS	5.96				
CEMENT MASONS	6.12				
ELECTRICIANS	12.85	.75	3%+.35		.01
ELEVATOR CONSTRUCTORS	9.90	.545	.35	4%+a&b	.02
IRONWORKERS:					
Structural & Ornamental	5.86				
Reinforcing	5.92				
LABORERS - UNSKILLED	4.89				
LABORERS - MASON TENDERS	5.15				
PAINTERS - BRUSH	10.30	.50	.25		.02
PAINTERS - TAPERS	10.30	.50	.25		.02
PLASTERERS	7.80				
PLUMBERS & STEAMFITTERS	14.09	.70+.15	1.30		
ROOFERS	5.55				
SHEET METAL WORKERS	11.40	.77+c	.95	.67	.02
TRUCK DRIVERS	5.62				
POWER EQUIPMENT OPERATORS:					
Backhoe Operator	7.15				
Bulldozer Operator	8.35				
Crane Operator	5.27				
Finishing Machine Operator	5.50				
Front End Loader	7.02				
Scraper	7.00				

FOOTNOTES:
a. 6 Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years & 2% for employee in business less than 5 years.
c. $5.00 per month - Life Insurance

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: OHIO COUNTY: LUCAS
DECISION NO. OH80-2048 DATE: Date of Publication
Supersedes Decision No. OH79-2064, dated July 6, 1979, in 44 FR 39933
DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.83	.55	1.40		.04
BOILERMAKERS	13.575	1.075	1.00		.03
BRICKLAYERS; MARBLE SETTERS & Stonemasons	13.175	1.06	1.40		.01
CARPENTERS; MILLWRIGHTS & Piledrivermen	13.70	1.20	.75		.05
CEMENT MASONS	14.99	.60			.02
ELECTRICIANS:					
Commercial	15.30	.85	3%+.95		.3%
Residential	9.54	.65	3%+.55		.1%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	13.225	.745	.56	a+b	.035
Helpers	70%JR	.745	.56	a+b	.035
GLAZIERS	12.675	.70	1.00		.01
IRONWORKERS	13.45	1.06	1.48		.06
LATHERS	13.76	1.20	.10		.01
LINE CONSTRUCTION:					
Linemen	15.12	.70	3%	c	4%
Cable Splicers	15.37	.70	3%	c	4%
Groundmen	9.10	.70	3%	c	4%
PAINTERS:					
Commercial:					
Brush; Drywall Tapers; Paper hangers	11.93	1.06	1.30		
Bridge; Railings; Powerhouse; Refinery Tanks	12.18	1.06	1.30		
Sandblasting; Spray; Pressure Cleaning	12.48	1.06	1.30		
Residential Work	10.79	1.06	1.30		
PLASTERERS	14.65	.60			.01
PLUMBERS; STEAMFITTERS; PIPEFITTERS:					
Commercial Building	15.64	1.35	1.15		.12
Residential	8.35	.50	.30		.03
ROOFERS	12.98	1.06	1.50		.02
SHEET METAL WORKERS	13.155	1.20	1.57		.045
SOFT FLOOR LAYERS:					
Commercial	12.03	1.20	.75		.04
Residential	10.30	1.20	.75		.04
SPRINKLER FITTERS	15.04	.85	1.20		.08
TERRAZZO WORKERS; TILE SETTERS	13.53	1.06	.30		
TERRAZZO WORKERS' FINISHERS & Tile Setters' Finishers	11.00	1.06	.40	.50	

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PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. Seven Paid Holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten Paid Holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS;					
Unskilled Laborers	$11.41	.80	.80		.11
Mason Tenders	11.54	.80	.80		.11
Gunnite Pot Men; Mortar Mixers	11.61	.80	.80		.11
Concrete Pump Nozzle Men; All Power Driven Tools; Power Buggies	11.565	.80	.80		.11
Pipe Layers; Bellmen; Bottom Men for Fire Brick Work Only	11.665	.80	.80		.11
Nozzle Operators for Gunnite Work	12.32	.80	.80		.11
Plasterers' Tenders	11.43	.80	.80		.11

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POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$13.44	.96	1.00		.11
GROUP B	13.28	.96	1.00		.11
GROUP C	12.93	.96	1.00		.11
GROUP D	12.12	.96	1.00		.11
GROUP E	11.79	.96	1.00		.11
GROUP F	9.58	.96	1.00		.11

GROUP A - A-Frame; Rotary Drills Used on Caisson Work for Foundations and Sub-Structure Work; Boiler or Compressor Operator Mounted on Crane (Piggyback Operation); Boom Truck (All Types); Cableways; Cherry Pickers; Combination Concrete Mixer and Tower; Concrete Pumps; Cranes (ALL Types); Derricks (ALL Types); Draglines; Dredge (Dipper, Clam or Suction) 3 Man Crew; Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Operator and Helicopter Winch Operator when Hoisting Builders Materials; Hoes (All Types); Hoisting Engines (Two or More Drums;); Lift Slab or Panel Jack Operator; Locomotives (All Types); Maintenance Engineer (Mechanic or Welder); Mixers Paving (Multiple Drum); Mobile Concrete Pumps with Boom; Panelboard (All Types on Site); Pile Driver; Power Shovels; Side Booms; Slip Form Pavers; Straddle Carriers (Building Construction on Site); Hammerhead Tower Cranes; Trench Machines (over 24" Wide); Tug Boat
GROUP B - Asphalt Paver; Bulldozer; C.M.I. Type Equipment; Endloaders; Kohlman Type Loaders (Dirt Loading); Lead Greaseman; Mucking Machines; Power Grader; Power Scoops; Power Scrapers; Push Cat
GROUP C - Air Compressor (Pressurizing Shafts or Tunnels); Asphalt Rollers; Fork Lifts; Hoist (One Drum); House Elevators; Man Lift; Power Boilers (Over 15 lbs. Pressure); Pump Operators Installing Well Points or Other Type of Dewatering System; Pumps (4" and over discharge); Submersible Pumps (4" and over discharge); Trenchers 24" and under

POWER EQUIPMENT OPERATORS Cont.

GROUP D - Compressors on Building Construction; Conveyors (Building Material) Generators; Gunnite Machines; Mixers (Capacity more than one Bag); Mixers (One Bag Capacity, Side Loader); Post Driver; Post Hole Diggers; Pavement Breaker (Hydraulic or Cable); Road Widening Trencher; Rollers; Welder Operator

GROUP E - Backfillers & Tampers; Batch Plant; Bar and Joint Installing Machines; Bullfloats; Burlap and Curing Machines; Clefplanes; Concrete Spreading Machines; Crushers; Deck Hands; Drum Firemen (Asphalt); Farm Type Tractors Pulling Attachments; Finishing Machines; Form Trenchers; High Pressure Pumps Over ½" Discharge; Hydro Seeders; Self-Propelled Power Spreader; Self-Propelled Sub-grader; Tire Repairmen; Tractors Pulling Sheeps Foot Roller or Grader; Vibratory Compactors (With Integral Power)

GROUP F - Oiler; Tenders; Inboard & Outboard Motor Boat Launch; Light Plant Operator; Power Driven Heaters (Oil Fired); Power Boilers (less than 15 lbs. Pressure); Pumps Under 4" Discharge; Submersible Pumps Under 4" Discharge

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Ohio COUNTIES: Mahoning & Trumbull
DECISION NO.: OH80-2024 DATE: Date of Publication
Supersedes Decision No. OH78-2148, dated November 13, 1978 in 43 FR 52658
DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.69	.55	1.50		.02
BOILERMAKERS	12.68	.90	1.20		.03
BRICKLAYERS; Stonemasons:					
Mahoning Co. & city of Youngstown	13.595	.85	1.25		.02
Trumbull (Remainder of County) Co.	13.99	.75	.50		.02
CARPENTERS:					
Commercial Building	12.77	1.34	1.35		.06
Residential	11.49	1.34	1.35		.06
CEMENT MASONS:					
Mahoning & Trumbull (Twps. of Hubbard & Liberty) Cos.	14.15	.70	.50		.05+c
Trumbull (Rem. of Co.) Co.	14.10	.75			.05+c
ELECTRICIANS:					
Mahoning (Milton Twp.) & Trumbull (Excluding Hubbard & Liberty Twps.) Cos.	15.54	.75	7%		.7%
Mahoning (Austintown, Beaver, Berlin, Broadman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield, & Youngstown Twps.) & Trumbull (Hubbard & Liberty Twps.) Cos.	14.52	.75	11%		.5%
Mahoning (Smith Twp.) Co.					
Commercial Building	14.46	.79	3%+.60		.3%
Residential (4 units only)	9.65	.55	3%+.50		.3%
ELEVATOR CONSTRUCTORS	13.70	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.59	1.195	.82	a+b	.035
GLAZIERS	13.70	.85	1.00		
INSULATORS:					
Residential	7.50	1.34	1.35		.06
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	14.25	.75	1.30		.09

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Asphalt Paving; Building & Construction Laborers; Carpenter Tenders & Railroad Construction Laborers	10.78	.70	.90		.10
All Machine Driven Tools, Electric, Gas or Air & Operation of all Pumps under 4"; All Men Working in Concrete such as Pouring, Puddling, Raking & Conveying; All Scaffold Help; Jackhammer Operator; Mason Tender; Mortar Mixer (Hand or Machine); Scrap Iron Burning & Spikers	10.90	.70	.90		.10
All Work done by Laborers 7 ft. or more in Depth	10.97	.70	.90		.10
Laborers (except Jackhammer) Working on Repair of Blast furnaces or Coke Plant & Auxiliary Facilities	11.08	.70	.90		.10
Jackhammer Operator in Trench or Shaft 7 ft. or more; Jackhammer on Blast Furnace or Coke Plant; Laser Beam Operator; Muckers; Pipelayers; Powder and Dynamite; & Tunnel and Caisson	11.10	.70	.90		.10
Ram Tight	11.15	.70	.90		.10
Gunniting & Sandblasting; Miner Air Tool; Pump Crete Operations; & Wrench Man	11.18	.70	.90		.10
Lancing	11.28	.70	.90		.10
Bellman; Hook Up Man	11.38	.70	.90		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Mahoning (excluding Smith Twp.) & Trumbull Cos.:					
Linemen; Cable Splicer; Operator - Pole Digging Equipment	$16.21	.70	3%		½%
Groundmen	12.97	.70	3%		½%
Mahoning Co. (Smith Twp.):					
Linemen	14.46	.79	3%+.60		.3%
Cable Splicer	13.70	.79	3%+.60		.3%
Line Equipment Operators	12.20	.79	3%+.60		.3%
Groundman; Truck Driver	8.60	.79	3%+.60		.3%
MARBLE SETTERS; Terrazzo Workers; & Tile Setters:					
Mahoning Co.	15.255				
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Mahoning (excluding Smith Twp.) & Trumbull Cos.	14.405				
MILLWRIGHTS; Piledrivermen	13.56	1.34	1.35		.06
PAINTERS:					
Brush; Dipping; Hydro Jet Cleaning; Paperhangers; Roller; Steamcleaning; Wall Washing; & Waterproofing	13.45	.85	1.15		
Spray; Epoxy-mastic (Brush & Roller)	13.95	.85	1.15		
Drywall Taping	13.60	.85	1.15		
Open Structural Steel	13.66	.85	1.15		
PLASTERERS:					
Mahoning & Trumbull (Liberty & Hubbard Twps.) Cos.:					
Commercial	14.46	.70			.03
Residential	12.29	.70			.03
Trumbull Co. (Rem. of Co.):					
Commercial	13.74	.60			.03
Residential	10.31	.60			.03
PLUMBERS; Steamfitters:					
Commercial:					
Mahoning & Trumbull (Hubbard & Liberty Twps.) Cos.	14.54	1.17	.80		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS; Steamfitters (Cont'd):					
Commercial:					
Trumbull Co. (Exclu. Hubbard & Liberty Twps.)	$14.69	1.07	1.15		.03
Residential	8.35	.50	.30		.03
ROOFERS	13.70	.85	.90		.02
SHEET METAL WORKERS:					
Commercial	14.14	.75	.83		.06
Residential	13.54	.75	.83		.06
SOFT FLOOR LAYERS:					
Commercial	12.23	1.34	1.35		.06
Residential	11.00	1.34	1.35		.06
SPRINKLER FITTERS	15.04	.85	1.20		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Seven Paid Holidays: A through F, & Day after Thanksgiving

b. Employer contributes 8% of Regular Hourly Rate to Vacation Pay Credit for Employee who has Worked in Business more than 5 Years, and 6% for Employee in Business less than 5 Years

c. $25.00 Per Employee Per Year

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POWER EQUIPMENT OPERATORS COMMERCIAL BUILDING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	14.36	1.05	1.00		.16
CLASS II	13.67	1.05	1.00		.16
CLASS III	13.03	1.05	1.00		.16
CLASS IV	12.62	1.05	1.00		.16
CLASS V	12.52	1.05	1.00		.16
CLASS VI	14.63	1.05	1.00		.16
RESIDENTIAL					
CLASS I	13.36	1.05	1.00		.16
CLASS II	12.67	1.05	1.00		.16
CLASS III	12.03	1.05	1.00		.16
CLASS IV	11.62	1.05	1.00		.16
CLASS V	11.52	1.05	1.00		.16
CLASS VI	13.63	1.05	1.00		.16

CLASS I - Asphalt Planer Heater; Austin Western & Similar Type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Berm Builder-Automatic; Backfiller W/Drag Attachments; Boat Derrick; Boat Tug; Boring Mach. Attached to Tractor; Bullclam; Bulldozer; C.M.I. Road Builder & Similar Types; Cable Placer & Layer; Carrier-Straddle; Carryall-Scraper or Scoop; Chicago Boom; Compactor w/Blade Attached; Concrete Spreader Finisher Comb., Crane; Crane-Stationary or Climbing; Crane-Electric Overhead; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-boom; Derrick-Car; Diggers-Wheel (not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Electromatic; Fork Lift; Frankie Pile; Gradall; Grader-Power; Gurry; Gurry-Self-Propelled; High Lift; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist-2 or 3; Jackall; Jumbo Mach.; Kocal or Kuhlman; Land-Seagoing Vehicle; Loader - Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Clip Harvester w/Boom; Mucking Mach.; Paver-Asphalt Finishing Mach.; Paver-Road Concrete; Paver-Slip Form; Place Crete Mach; Post Driver; Power Driven Hydraulic Pumps & Jacks; Pump Crete Machine; Regulator-Ballast; Reigs-Drilling; Shovels; Spikemaster; Stonecrusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor W/ Attachments; Truck-Boom; Truck-Tire-Assigned to Job; Trench Mach.; Tunnel Machine (Mark 21 Java or Similar); Whirley

CLASS II - Asphalt Plant; Bending Machine; Boring Mach.; Chip Harvester W/O Boom; Cleaning Mach.- Pipeline Type; Coating Mach-Pipeline Type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Mach.; Grease Truck Op.; Grout Pump; Gunnite Mach.; Huck Bolting Mach.; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Firemen; Power Broom; Refrigeration Plant; Sasgen Derricks; Seeding Mach.; Self-Propelled Mobile Vibrator Compactor or Roller; Hoist-Single Drum; Soil Stabilizer (Pump Type); Spray Cure Mach.-Self Propelled; Straw Blower Mach.; Sub-Grader; Tube Finisher or Broom C.M.I. or Similar Type; Tugger Hoist

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POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III - Batch Plant-Job Related; Boiler Op.; Compressor (125 CFM or over); Curb Builder (Self-propelled); Generator-Steam; Jack-Hydraulic Driven; Mixer-Concrete; Mulching Machine; Pin Puller; Pulverizer; Pump; Road Finishing Machine (Pulltype); Roller; Saw-Concrete-Self-propelled; Spray Cure Machine - Motor Powered; Spreader (Side driver shoulder attachment); Tractor; Trencher-form; Water Blaster
CLASS IV - Brake Man; Compressor Under 125 CFM; Conveyor; Conveyor 12 ft. or under other than servicing Bricklayers; Deck Hand; Drill Wagon; Generator Sets; Heaters-Portable Power (2 to 5); Mechanic; Jacks Hydraulic (Railroad); Ladavator; Roller (Walk behind 1 ton or over); Steam Jenny; Syphons; Tenders; Vibrator-Gasoline; Welding Machines (2) (Fuel Burning)
CLASS V - Oiler
CLASS VI - Rigs-Pile Driving or Caisson Type

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

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July 11, 1980

Part V

Council on Wage and Price Stability

Modification of Voluntary Price Standards; Request for Comments

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Request for Comments on Modifications of Voluntary Price Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Request for comments on modifications of voluntary price standards.

SUMMARY: The Council is seeking broad public participation in evaluating the voluntary price standards program. Public input analyzing and reviewing the second program year is essential for designing an effective third-year program.

To facilitate preparation of comments, the Council has provided background information on issues that must be resolved for the third program year. These practical and conceptual issues raise a number of possible modifications of the standards.

Assuming that there will be a third program year, the Council intends to publish interim final price standards in September 1980.

DATES: Written comments on modifications of voluntary price standards should be submitted by August 1, 1980.

ADDRESS: Send comments to: Office of General Counsel, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Patrick Macfarland (202) 456-6286.

SUPPLEMENTARY INFORMATION: The Council is specifically soliciting comments on the issues presented in this document, although comments on any related issues will be appreciated. Comments should be sent to the above address no later than August 1, 1980.

Authority: Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979).

Issued in Washington, D.C. July 7, 1980.

R. Robert Russell,

Director, Council on Wage and Price Stability.

THE PAY/PRICE STANDARDS PROGRAM; EVALUATION AND THIRD-YEAR ISSUES

Table of Contents

I. Introduction

The purpose of this document is to solicit public comment on one of the central components of the broad anti-inflation program that the President announced in October 1978—the voluntary pay and price standards. During the first year of the program, the standards restrained the rise in prices and employment costs in the industrial sector of the economy. But accelerating inflation created problems for designing the second-year program, and we observed at that time that some of the provisions of the standards created distortions or inequities. To initiate the process of evaluation and review and to encourage public participation, we published an *Issue Paper* on August 7, 1979, requesting comments on the first-year standards. The paper included an economic review of the first program year as well as a discussion of conceptual and practical issues on which we particularly wanted the public to focus.

The response to the *Issue Paper* was helpful in developing the second-year standards—not only in revealing how the public perceived the program but also in getting the public's views on some of the options for resolving the technical issues. After considering the responses to the *Issue Paper*, the Council on September 28, 1979, published interim final second-year price standards. With minor changes, these standards became final on November 1, 1979.

As a result of comments that this program, unlike previous ones, had not included a clearly defined role for representatives of labor, management, and the public, the President created the Council's Pay Advisory Committee. The Committee, composed of 18 members—six representatives each from labor, business, and the general public—was given a variety of tasks, with its principal assignment being to recommend modifications of the pay standard, including the basic pay limitation, the inflation assumption for evaluating cost-of-living-adjustment clauses, and the adjustment for employee units not covered by such clauses. The Council's Price Advisory Committee was also created to include six representatives of the general public and it was asked to comment on the revised price standard developed for the second program year.

As we approach the end of the second program year, we confront the question, once again, of whether the pay and price standards should be extended for a third year, and, if so, with what changes, major or minor. Historically, programs like this tend to diminish in effectiveness over time and may develop distortions and inefficiencies. Against these considerations, we must weigh the manifest need for continued pay and price restraint, and the doubt that restrained monetary and fiscal policy alone can limit inflation except at excessive costs.

Because the comments we received last year were helpful and because many interested parties have asked for one, we have published another *Issue Paper*. Like last year's, it includes an evaluation of the standards program to

date, drawing on both published aggregate data and aggregated company-specific data supplied to the Council (although the latter are available so far only for the first program year). This evaluation (presented in Section II) constitutes a regulatory review of the standards program. Section III attempts to identify both fundamental issues—including the most fundamental one of whether the standards should be continued in something like their present form—and technical issues on which we wish to have the public's comments.

The situation with the pay standard differs from that with the price standards. The Council adopted the present pay standard only recently after lengthy consideration by and consultation with the Pay Advisory Committee. We have therefore decided that it would be premature to publish a discussion of pay-standard issues at this time, although comment on this subject is not precluded.

II. Evaluation of the Program

Our evaluation begins with a review of wage and price developments both before and during the program (Subsection A). This cursory review provides evidence about the program's effectiveness—based upon both what actually happened during the program and estimates of what would have happened in the absence of the program. Subsections B and C use aggregated company data supplied to the Council to assess the extent to which companies were constrained by the standards and to quantify the amount of noncompliance with the standards and the various sources of slippage (i.e., variation from the basic pay and price limitations attributable to exemptions, exceptions, and exclusions).

A. Analysis of Aggregate Wage and Price Data

1. *Price Performance.* When the anti-inflation program was announced in October 1978, the annual rate of inflation—as measured by the Consumer Price Index (CPI)—was running about 9 percent (see Table 1). During the first quarter of the program, the inflation rate changed very little, but in early 1979 it escalated sharply to about 13 percent. Then, after remaining in the 13-to-14-percent range throughout 1979, it rose sharply again in early 1980 reaching an annual rate of 18 percent, before falling in April and May to an annual rate of 11 percent.

Table 1.—*Selected Components of the Consumer Price Index*

[Seasonally adjusted, annual percentage rates of change]

	December 1979 relative importance (percent)	Calendar 1978 [1]	Calendar 1979 [1]	First program year					Second program year		
				Change over previous quarter							
				78:III	78:IV	79:I	79:II	79:III	79:IV	80:I	March to May [2]
All Items	(100.0)	9.0	13.3	8.9	8.9	13.0	12.5	13.8	13.7	18.1	11.3
Energy Commodities	(6.9)	8.1	52.3	10.9	18.9	37.5	83.8	67.9	26.7	96.5	0.0
Mortgage Interest Cost (MIC)	(8.7)	22.0	34.7	24.0	25.1	31.5	27.7	29.0	52.8	53.8	47.3
Food	(17.7)	11.8	10.2	6.7	11.6	16.0	6.4	6.5	12.1	3.8	5.2
All Items less MIC and Energy Commodities	(84.4)	8.4	9.2	7.7	7.2	10.2	8.0	9.3	9.5	9.8	8.8
All Items less Food, MIC, and Energy Commodities	(66.8)	7.3	9.0	7.9	6.9	8.7	8.4	10.0	8.9	11.4	9.8
Underlying Rate [3]	(47.9)	6.5	7.8	6.6	7.2	7.5	7.2	8.1	8.6	12.7	9.7

[1] December-to-December changes not seasonally adjusted.
[2] Rates of change from March to May; June figures are not yet available.
[3] The Consumer Price Index excluding the costs of food, energy, used cars, and home purchase, finance, insurance, and taxes.
Source: CWPS calculations based on data from U.S Department of Labor, Bureau of Labor Statistics.

These accelerations are commonly cited as evidence that the pay/price-standards program was ineffective. That summary conclusion is not well founded. The standards program necessarily excludes many prices from its coverage; it makes no sense to apply standards that call for price restraint in markets where sellers have little or no discretion in setting prices—i.e., in highly competitive markets, where attempts to hold prices below market-clearing levels would quickly generate damaging shortages. We therefore excluded from the program prices set in organized exchange markets. We also excluded raw-material prices, generally, because most are determined in highly competitive world markets, and attempts to restrict these prices artificially could quickly reduce domestic supplies. Also excluded are prices set by sales contracts in effect before the program, prices of new or custom products (since it is impossible to compute price changes for these commodities), and interest rates (since these are competitively determined and are heavily influenced by policy decisions of the Federal Reserve Board). Despite these exclusions, about 60 percent of the economy is covered by the price standards, as compared to about 45 percent under the Nixon Administration's mandatory controls.

The surge in the inflation rate in 1979 and early 1980 was the result primarily of a sharp acceleration in prices not covered by the standards. The world-wide economic expansion that continued throughout 1979 sent raw-material prices skyrocketing. These soaring, raw-material prices rippled through the American economy, forcing many companies off the basic price limitation and onto the gross-margin and profit-margin limitations, which allow uncontrollable cost increases to be passed through.

The most dramatic raw-material price surge was the 110-percent increase in crude-oil prices during 1979 and early 1980. This jump contributed to the 80-percent increase in the U.S. energy-commodity prices during that period. In fact, the energy-commodity component of the CPI, accounting for only 7 percent of the weight, was directly responsible for one-fifth of the overall increase in consumer prices in 1979, and nearly one-third of the price surge in the first quarter of 1980.

There were, moreover, substantial *indirect* effects, not only because energy is an important input into the production process, but also because rising consumer prices elicit higher wage demands, and so inflate labor costs. It has been estimated that the total effect of energy-price increases is roughly double the direct effect, although much of the indirect effect is lagged. We independently estimate that at least 2 percentage points of the inflation rate in early 1980—on top of the 5.2 points of direct impact—is attributable to the

lagged effect of soaring energy prices in 1979.

Of course, not all of this increase in energy prices can be attributed to the doubling of crude-oil prices during this period; a large part is attributable to the substantially expanded margins of both petroleum refiners and gasoline and home-heating-oil retailers and distributors. Earlier this year, the Council published a detailed analysis of these expanded margins (*Petroleum Prices and the Price Standards*, February 25, 1980).

Another important contributor to the recent surge in the CPI was the steep climb in interest rates. This contributes directly to the measured rate of inflation through the homeownership component of the CPI. Mortgage interest costs increased 35 percent during 1979, and at an annual rate of 54 percent in early 1980. Thus, the mortgage-interest component of the CPI, whose weight is only 8½ percent of the total, was responsible for one fourth of the total inflation in 1979 and the first quarter of 1980.

Taken together, energy-commodity prices and mortgage-interest costs, which accounted for less than one-sixth of the weight of the CPI, were responsible for nearly half of the inflation in 1979 and for over half of the inflation in the first quarter of 1980. Even more dramatic, they accounted for three-fourths of the *acceleration* in inflation from 1978 to 1979 and from 1979 to the first quarter of 1980.

No reasonable anti-inflation program could have prevented the surge of inflation caused by the escalation of crude-oil prices and interest rates. No petroleum importing country has insulated itself from the world-wide explosion of crude-oil prices. The U.S. economy has, indeed, been the hardest hit, because it is the most energy-intensive country in the world other than Canada (see section V of the Council's *Inflation Update*, released June 12, 1980). Similarly, any attempt by the Federal Reserve Board to prevent the surge in interest rates by accomodating the large demand for credit would have exacerbated the inflation by expanding the money supply even more rapidly and adding to aggregate demand. The degree to which interest rates can be lowered by expanding the money supply is limited since high interest rates are as much a result as a cause of high inflation rates. (The inflation rate affects interest rates by influencing price expectations and hence the expected real rates of return from any given level of interest rates.)

For these reasons, both crude-oil prices and interest rates have been excluded from the program, and the very large part of inflation for which they have been responsible cannot be attributed to noncompliance with the standards. On the other hand, this experience demonstrates the limitations of wage and price standards as an instrument for combating inflation: They are essentially powerless to prevent inflation caused by either excess aggregate demand or surging raw-material prices.

The proper measure to be used in assessing the program's effectiveness is the behavior of prices in the sector of the economy that it covers. No precise index is available. As a proxy, we have used the CPI-based underlying inflation rate (the CPI less the food, energy, homeownership, and used-car components). This and other underlying-rate concepts which are intended to measure fundamental inflationary pressures in the industrial and service core of the economy (in contrast with the effects of exogenous shocks such as the crude-oil price increase) are discussed in the Coucil's latest *Inflation Update* (June 12, 1980).

The CPI-based measure of the underlying rate of inflation was 6½ percent when the program was announced in October, 1978. It accelerated very little until the third quarter of 1979, when it moved up to 8 percent. Another gradual increase, to about 8½ percent, in the fourth quarter of 1979 was succeeded by an abrupt ascent to about 12½ percent in the first quarter of 1980. The rise in the underlying inflation rate reflected in this measure was genuine; on the other hand, the 12½ percent figure exaggerates it, since it reflects, in large part, the temporary surge of energy costs through other sectors of the economy; a surge that would be expected to abate, with a lag, once the surge of energy prices themselves abated.

Like the changes in the entire CPI, accelerations or decelerations of even the underlying inflation rate do not in themselves provide clear evidence of the effectiveness or ineffectiveness of the program. The ideal test, of course, is a comparison of the actual inflation rate with the rate that would have prevailed in the absence of the program; we will report some results of such comparisons in the final segment of this section. Another approach is to compare the price increases that actually took place with what the standards would have allowed; this we will do here.

The underlying inflation rate during the 1976–77 based period—as measured by the CPI residual—was about 6–1/4 percent. Because the first-year price standard called for price increases 1/2 percentage point below those in the base period, one would expect, with universal compliance and no slippage (i.e., in the absence of larger price increases attributable to exceptions and exclusions from the general standard), an underlying rate of inflation during the first year of 5–3/4 percent. The actual rate was 7–1/2 percent, suggesting slippage and/or noncompliance of about 1–3/4 percentage points. As will be seen in the next section, most of the slippage is attributable to the passing through of the surge in raw-material prices throughout 1979 under the exceptions and alternative standards available to those with uncontrollable cost increases.

In the second year, the price standard was loosened by 1 percentage point. Hence—again with universal compliance and no slippage—one would expect the underlying rate of inflation to have been about 6–3/4 percent. The actual annual rate during the first quarter of the second program year was 8–1/2 percent, indicating slippage of about 1–3/4 percentage points—the same as in the first program year. The apparent slippage increased substantially in the first quarter of 1980, but appears to have declined since then.

To conclude, inflation rates in the sectors covered by the standards appear not to have been inexplicably larger than would be expected with universal compliance and no slippage. Because there was substantial slippage attributable to the surge in raw-material prices, the aggregate price data do not support the contention that the standards were ineffective.

2. *Wage Performance.* The pattern of changes of wages and other measures of labor compensation suggest that the pay standard has had a definite restraining influence. Wage inflation during the first year of the program was slightly below the rate in the preceding year, despite the sharp acceleration that took place in the cost of living and concomitant decline in real wages (see Table 2). Union wages went up by 8–1/2 percent, and nonunion wages by 7–1/2 percent. The average increase in total private labor compensation (wages plus private fringe benefits) was about 1/2 percentage point higher than in wages alone, because fringe benefits increased by 12 percent.

The 8–1/2 percent increase in total private labor compensation during the first year of the program was about 1–1/2 percentage points above the 7-percent pay standard. It thus appears that the amount of slippage on the pay side was slightly smaller than on the price side—a result that is not surprising in view of

the substantial increase in raw-material prices during that year.

Wage inflation appears to have accelerated somewhat in late 1979 and early 1980. The rate of increase of the hourly earnings index moved up to 9-1/2 percent in the second half of 1979 and to 10 percent in the first quarter of 1980.

Table 2.—*Selected Measures of Employee Compensation (Private Nonfarm Sector)*[1]

[Seasonally adjusted, annual percentage rates of change]

	Fiscal 1978	Fiscal 1979	First program year					Second program year		
			Change over previous year							
			78:III	78:IV	79:I	79:II	79:III	79:IV	80:I	March to May
Average Hourly Earnings	8.6	8.3	8.0	10.0	8.4	6.1	8.8	8.5	9.1	3.7
Hourly Earnings Index	8.4	8.2	8.0	8.4	7.9	7.0	9.6	9.2	10.9	6.5
Employment Cost Index	8.0	7.7	8.2	6.1	8.2	7.8	8.7	10.9	10.0	.....
Union	7.9	8.4	8.7	8.2	7.4	8.7	9.1	10.8	9.5	.....
Nonunion	8.0	7.3	7.8	4.5	8.7	7.8	7.8	9.5	10.4	.....
Total Hourly Compensation	8.6	8.9	8.7	8.7	10.3	7.9	8.6	9.0	10.3	.....
Private Hourly Compensation	8.4	8.6	9.0	8.8	8.6	8.2	8.9	9.1	10.2	.....
Wages & Salaries Per Hour	8.2	8.3	8.6	8.8	8.8	7.4	8.1	8.7	9.7	.....
Fringe Benefits Per Hour	10.1	12.0	12.3	9.1	8.9	15.2	15.2	12.6	13.7	.....
Employer Contributions to Social Insurance Per Hour	11.7	12.2	5.0	7.4	33.5	5.2	5.2	6.6	13.3	.....
Real Hourly Earnings Index	0.1	−3.6	−0.3	−0.4	−5.3	−5.7	−3.4	−4.1	−7.1	−4.6
Real Spendable Earnings (Weekly)	−3.2	−3.9	−2.4	−0.4	−1.3	−9.5	−4.4	−5.6	−11.8	−11.4

[1] Fiscal year figures for the Employment Cost Index and all hourly and real-earnings series are September-to-September changes and quarterly figures measure three-month changes. Hourly compensation, productivity, and unit labor costs are for all employees in the nonfarm business sector, fiscal year figures measure third quarter to third quarter changes.

Source: CWPS calculations based on data from U.S. Department of Labor, Bureau of Labor Statistics; and U.S. Department of Commerce, Bureau of Economic Analysis.

An interim pay standard was in effect during the last quarter of 1979 and the first quarter of 1980 while the Administration awaited the recommendations of the Pay Advisory Committee. During this period, the Council implemented an automatic 1-percentage-point catch-up adjustment for workers in employee units that were in compliance during the first program year and did not have cost-of-living-adjustment clauses, which raised the standard to 8 percent for the great majority of workers. The 9-to-10 percent increases that actually occurred in this period thus reflect a difference of about 1 to 2 percentage points, which is comparable to the different in the first program year.

3. *Wage Distributions.* The behavior of average wage increases provides some indication of wage restraint under the program. The intent of the standards, however, is not to restrain all wage increases, but rather to discourage increases in excess of the stipulated ceiling after allowances for exceptions and exclusions, without elevating increases that otherwise would have been below it. We can roughly assess our success in achieving these goals by examining the way in which individual wage increases were distributed.

Figure 1 shows distributions in the first program year (1978:IV to 1979:III) and the base period (1977:IV to 1978:III). (For simplicity, we refer to the former of these periods as 1979 and the latter as 1978). The data are nominal wage increases for all workers.

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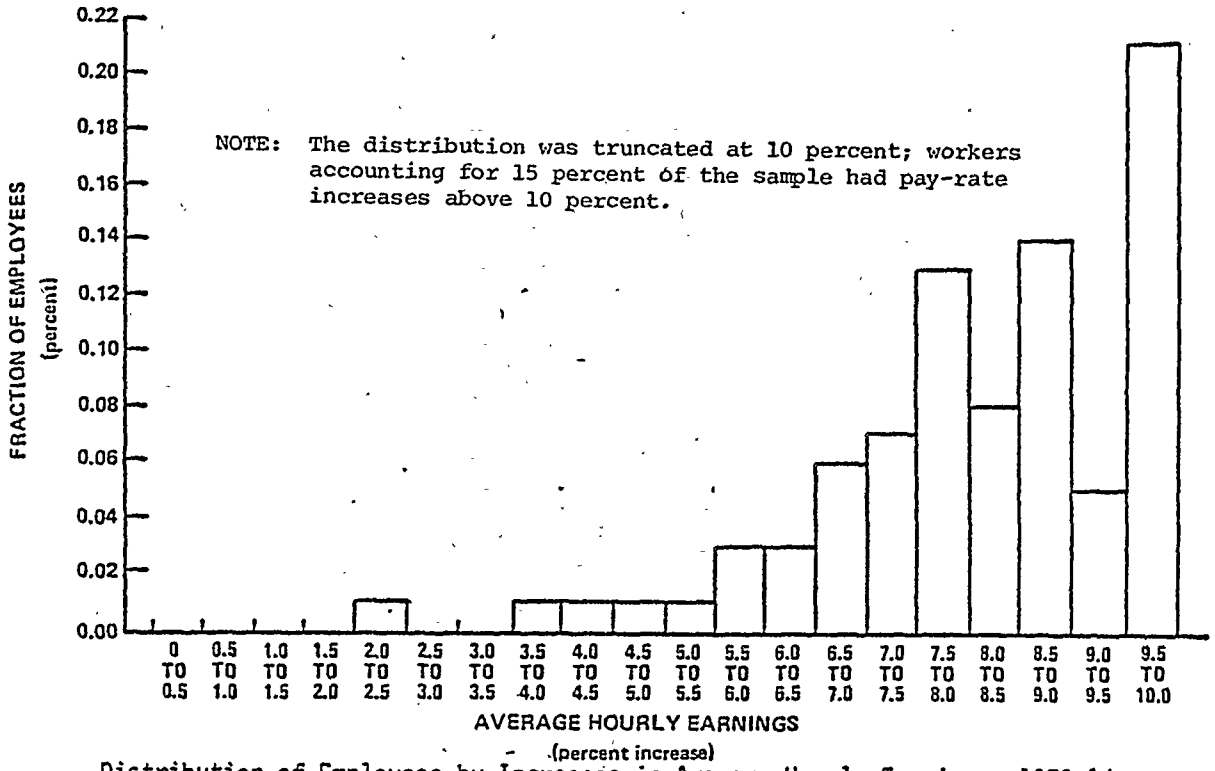
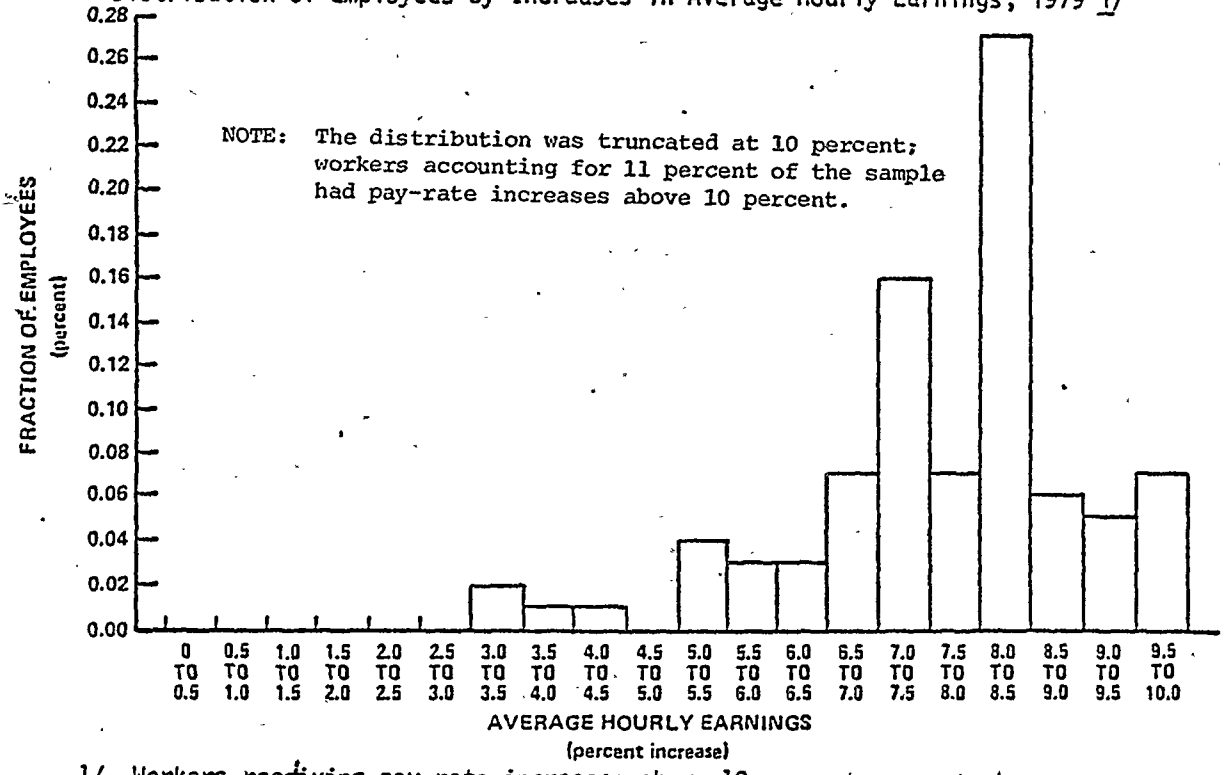
Figure 1

Distribution of Employees by Increases in Average Hourly Earnings, 1978 1/



Distribution of Employees by Increases in Average Hourly Earnings, 1979 1/



1/ Workers receiving pay-rate increases above 10 percent are not shown.

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It is clear from these distributions that the bulk of the increases was redistributed from the 8½-to-10-percent to the 7-to-9-percent range between 1978 and 1979. Moreover, there is no evidence of an upward shift of the concentration of workers at the lower end of the distribution—i.e., no evidence of a tendency for the ceiling to become also a floor. As a result, the average (mean) pay increase was lowered from 8½ percent to 8 percent. The downward shift in the distribution between 1978 and 1979 would be even more pronounced if we were to show real rather than nominal wages, because the rate of increase in the CPI rose from 8.3 percent to 12.1 percent in this same interval.

To summarize, despite the substantial inflationary pressures on wages during the first program year, there was a downward shift in the upper range of wage increases and no upward shift in the lower part of the range. The fact that a substantial number of workers received increases just above 7 percent is largely the consequence of the various exceptions and exclusions incorporated into the standard to avoid inequities and market distortions. We examine these adjustments in detail in Section II-B, which also contains an analysis of wage distributions drawn from the data supplied by individual companies.

4. *Simulation Results.* The previous sections provide impressionistic evidence that the standards program was reasonably effective in preventing the spillover of the energy-price surge into the industrial wage/price structure. The relatively modest escalation in wage inflation and in the underlying inflation rate (compared to the much greater escalation of the overall inflation rate) supports the view that the standards had some effect in restraining wage and price increases.

In order to assess rigorously the effectiveness of a program whose purpose is to alter the course of events, it is necessary to estimate (as best one can) what would have happened in its absence. Obviously it is not possible to perform an experiment over the life of the program that would compare what would have happened both with and without it. It is possible, however, to construct models that predict the behavior over time of the relevant variables and to use such models to simulate what would have happened to these variables in the absence of the program (and of any other structural changes that may have occurred in the wage/price process that could have caused the results to differ from what would have been predicted from historical experience). A comparison of the simulated results with what actually happened allows one to assess the effect of the program, assuming that the advent of the standards was the principal structural change in that process.

Because of numerous statistical problems, constructing wage/price models that generate reliable simulations over the program period is difficult. Some preliminary work on this problem has been done by the Council of Economic Advisors (see the *Economic Report of the President,* January 1980) and by the Council (see our *Interim Report on the Effectiveness of the Pay and Price Standards,* May 6, 1980).

Using a variety of models developed by others as well as its staff, the CEA estimates that the annual rate of growth of wages during the first program year would have been 1 to 1½ percentage points greater were it not for the standards. Our simulation exercises suggest that the annual rate of growth of average hourly earnings was 1.8 to 2.0 percentage points less than it would have been without the program. We also estimate that the CPI-based underlying rate of inflation (the CPI less the costs of food, energy, used cars, and home purchase, finance, taxes, and insurance) would have been 1.1 to 1.5 percentage points higher; hence, the overall inflation rate—assuming that the program had *no* effect on the costs of food, energy, used cars, and home purchase, finance, taxes, and insurance—would have been one-half to three-quarters of a percentage point higher.

These simulation results suggest that the program had a greater restraining effect on wages than on prices. There are two major reasons for this difference. First, the price standards could not and should not have constrained the prices of primary energy goods, houses, interest rates, and food at the farm; hence, the effect of the price standard on the covered sector is diluted when it is evaluated on the basis of its effect on the entire Consumer Price Index. Second, even within the covered sector, there was more slippage on the price than the wage side, primarily because of the unavoidable passthroughs of energy and other raw-material costs.

It would, therefore, be incorrect to conclude from these simple comparisons that the standards bore discriminately unfairly on wages. In fact, labor's share of total income was not compressed relative to the profit share. Since the program was announced, the profit share has *decreased* from 10.0 percent to 8.6 percent, while labor's share has *increased* from 75.4 percent to 76.4 percent. Almost half of the increase in labor's share, however, is attributable to rising social insurance taxes; the share of wages and salaries plus private fringe benefits increased by only 0.5 percentage points—from 65.9 percent in 1978:III to 66.4 percent in 1980:I (see Table 3). More important, simulation studies carried out by the Council in its *Inflation Update* (June 12, 1980) suggest that the observed changes in income shares during the program period are explained largely by business cycle variables—i.e., that the program had no (statistically significant) effect on income shares. This is not surprising, as the program was designed to be neutral with respect to income shares.

Table 3.—*National Income Shares During the Program Period*

[Percent]

	Corporate profits [1]	Interest income	Rental income [2]	Proprietors income [2]	Labor compensation		
					Total labor compensation	Social insurance taxes	Wages, salaries, and private fringe benefits [3]
1978:III	10.0	6.4	1.5	6.7	75.4	9.5	65.9
1978:IV	10.2	6.5	1.5	6.9	75.0	9.4	65.6
1979:I	9.6	6.6	1.5	6.9	75.5	9.9	65.6
1979:II	9.3	6.6	1.4	6.8	75.9	9.9	66.0
1979:III	9.3	6.8	1.4	6.7	75.9	9.8	66.1
1979:IV	8.9	7.0	1.4	6.8	76.0	9.8	66.2
1980:I	8.6	7.3	1.3	6.4	76.4	10.0	66.4

[1] Before taxes with inventory valuation adjustment and capital consumption adjustment.
[2] With capital consumption adjustment.
[3] Fringe benefits include employer payments for private pension, health and welfare funds, compensation for injuries, directors' fees, and pay of the military reserves.
Source: U.S. Department of Commerce, Bureau of Economic Analysis.

B. Analysis of Company-Specific Pay Data

As part of its monitoring effort, the Council collected data on pay-rate increases granted during the first program year by compliance units with 10,000 or more employees. These data shed additional light on the effects of the program on wages.

The pay standard requires companies to partition workers into three categories: those employees subject to a collective-bargaining agreement, all management employees, and all other (nonmanagement nonunion) employees. Hence, separate statistics are available for these three groups. In all, the pay reports cover 7½ million workers—close to a third of them in management units, about a fifth in collective-bargaining units, and the rest in the all-other category. The reports do not cover workers excluded under the low-wage exemption (those with straight-time hourly wages of $4.00 or less on October 1, 1978) or collective-bargaining units whose contracts were not renegotiated during the first program year. By subtracting these excluded groups from the total work force, we estimate that the number of workers covered by the pay standard in the first year was 48 million; thus, the pay-reporting forms encompass about 15½ percent of the covered work force.

The average increase in wages plus fringe benefits (before adjustments for exclusions and exceptions) for workers in the reporting universe was 7.6 percent in the first year of the program—11.0 percent for union workers and 6.6 percent for both the management and nonmanagement nonunion groups combined. (See Table 4.) The discrepancy between this 7.6 percent and the 8.6-percent increase in private hourly compensation, in fiscal-year 1979 for the entire economy (see subsection A) is attributable to several factors.

First, the applicable periods for the data reported in Table 4 do not conform precisely to the Council's first program year (essentially fiscal-year 1979). For example, the first year of a collective-bargaining agreement signed late in the first program year would extend well into the second program year.

Second, many of the collective-bargaining contracts contain cost-of-living adjustment (COLA) clauses, and the cost of these, as reported to us, are based on company assumptions about the prospective inflation rate. Other data supplied by these companies indicate that they assumed, on average, an inflation rate of about 9.4 percent-substantially below the 13.5 percent that the CPI actually increased, on average, during the first year of collective-bargaining agreements signed during the first year of the program (estimated roughly as the average of the CPI increases over the nine annual periods, September 1978 to September 1979, October 1978 to October 1979, and so on up through May 1979 to May 1980). With an assumption of an average recovery rate of 60 percent (i.e., that a one-percentage-point increase in the CPI results in an average COLA-payment of 0.6 percentage point), this average under-forecast of the CPI increase resulted in a 2½ percentage-point underestimation of COLA payments. Because approximately 3 percent of the workforce signed collective-bargaining agreements with such clauses during the first program year, this undervaluation accounts for about 0.1 percentage point of the one point difference between the reported increase and the national aggregate increase.

Another factor explaining this disparity is the exclusion from the reporting sample of the increases under collective-bargaining agreements signed before the announcement of the program. We estimate that these averaged 8.1 percent and that the affected workers account for about 14½ percent of the total workforce. Thus, the exclusion of these workers from the reporting universe accounts for another 0.1 percentage point of the 1.0 point disparity.

Finally, the low-wage exemption accounts for a substantial share of the disparity. Approximately 35 percent of the workforce was excluded under this exemption. We estimate that, on average, these excluded workers received 9½-percent increases during the first program year (the increase in the minimum wage was 9.4 percent, and workers slightly above the minimum wage received comparable increases in order to avoid wage compression). After appropriate weighting of these percentage increases by the low level of wages involved, we estimate that the low-wage exemption accounts for about 0.4 percentage point of the one-point difference.

The three quantified factors—underestimation of the costs of COLA clauses, exemption of increases under pre-existing contracts, and the low-wage exemption—account for about six-tenths of the 1.0-percentage-point disparity between the increase in the national aggregate wage level and the increases shown by our reporting universe. The small remainder can be attributed to statistical error and the possible differences between the wage increases of reporting and nonreporting compliance units (for example, most of the workers covered by construction and teamsters settlements—which typically provided for very large increases—are in compliance units with less than 10,000 workers).

As noted above, the average reported first-year increase under collective-bargaining agreements was 11.0 percent. The average annual increase over the lives of the contracts was 8.9 percent. The first-year pay standard restricted the increase in each year of a multi-year contract to no more than 8 percent and the average annual increase to no more than 7 percent. The fact that the reported increases are above the respective limitations does not necessarily mean that these increases

Table 4.—*Pay Data for Reporting Units* [1]

	All workers [2]		Collectivebargaining units [2]		Management units	All other units
Number of workers	7,430,162		1,393,054		2,415,395	3,615,713
Percent of workers	100.0		18.8		32.5	48.7
	First year	Annual average over life of contract	First year	Annual average over life of contract		
Unadjusted percentage pay-rate increase	7.6	7.1	11.0	8.9	6.6	6.6
Adjusted percentage pay-rate increase	6.3	6.1	7.9	6.8	5.8	5.8
Adjustment	1.3	1.0	3.1	2.1	0.8	0.8

[1] The percentage increases are obtained by averaging across employee units, using base-period employment as weights.
[2] Pay increases for collective-bargaining units are calculated in two ways: The first-year calculations represent the costs of the first year of collective-bargaining agreements negotiated during the program period, while the annual-average data pertain to the (geometric) average annual rate of increase over the life of the contract. Because of front-loading, the first-year estimates for multi-year contracts are usually larger than the annual averages.

were not in compliance with the pay standard. For the purpose of evaluating compliance, the pay standard provided for several departures from actual costs. The most important of these adjustments is attributable to the CPI assumption used in evaluating COLA's. The 6-percent inflation-rate assumption stipulated by the standards turned out to be below the actual inflation rate and below the assumptions made throughout the year by employers. In addition, the standard provided a number of exceptions and exclusions, in order to assure that it does not generate unnecessary inequities or inefficiencies.

Adjustments such as these lowered the average pay-rate increases of all three categories of employees, as measured under the standard; but the adjustment was especially dramatic in the case of collective-bargaining units. The average downward adjustment for union workers was 3.1 percentage points for the first year and 2.1 percentage points for the annual average over the lives of the contracts. In contrast, the average adjustment for both management and nonmanagement nonunion units was 0.8 percentage points. Thus, the average chargeable first-year increase for union workers was 7.9 percent (slightly below the 8-percent limit), and the average annual chargeable increase over the lives of contracts signed during the first year was 6.8 percent (slightly below the 7-percent limit). The average chargeable increase for both management and nonmanagement nonunion workers was 5.8 percent (substantially below the pay standard). The average downward adjustment to the average increase of 7.6 percent for all workers in the first year was 1.3 percentage points, which results in an average chargeable pay-rate increase of 6.3 percent.

The adjustments for each group are summarized in Table 5. (The components are described in detail in Appendix A.) This table shows that half of the discrepancy between reported actual and chargeable pay-rate increases is attributable to discrepancies between the COLA assumption stipulated by the standards and the evaluations made by the employers. As would be expected, this COLA adjustment was most significant in the case of union employee units, accounting for 1.5 of the 2.1 percentage points of adjustments for these workers; it was also important for the nonmanagement, nonunion units, accounting for more than a third of their total adjustment. The two "maintenance of benefit" adjustments for health insurance and pensions also contributed substantially to the disparities between actual and chargeable pay increases for all groups. The exclusion of overages attributable to formal annual pay plans announced before the beginning of the program were important for both categories of nonunion workers. The exclusion of promotions and qualification increases for employee units using the "fixed population" method of calculation was significant only for management units; exclusions for incentive pay, on the other hand, were a significant factor only for the nonmanagement, nonunion units.

Table 5.—Contributions of Various Components to Adjustments of Wages and Salaries [1] (FIRST PROGRAM YEAR)

	All workers	Union [2]	Management	Others
Total adjustment [3]	1.0	2.1	0.8	0.8
Contribution of: COLA evaluation	0.5	1.5	0.1	0.3
Maintenance of health benefits	0.1	0.2	0.1	0.1
Pension plans	0.2	0.2	0.2	0.1
Formal annual pay plans	0.1	NA	0.2	0.1
Excluded promotions and qualification increases	0.0	NA	0.1	0.0
Excluded incentive pay	0.0	0.0	0.0	0.1
Exceptions	0.1	0.3	0.1	0.1

[1] See Appendix A for descriptions of these adjustments.
[2] Annual average over the life of the contract.
[3] Components may not add to total because of rounding (effect of weighted average method is negligible, see Appendix A).

Each of the foregoing adjustments of actual pay increases was an integral part of the basic standard and was therefore self-administered by the companies. The pay standard also allowed for special exceptions for tandem relationships between different employee units, increases necessitated by acute labor shortages, the exchange of pay increases for phasing out of productivity-inhibiting work rules, and the correction of inequities. The slippage in the standards accounted for by these Council-granted exceptions was significant for all three groups, but it was much larger for the union groups than for management and nonmanagement, nonunion groups.

While much can be learned by examining the *averages* of the pay-rate increases, there is also something to be learned from the *distributions*. Figures 2, 3, and 4 show the distribution of both actual and chargeable pay-rate increases for all reporting workers, union employee units, and nonunion employee units. (We do not show distributions for the management and nonmanagement units separately because the two are similar.) In each case, the estimates are weighted by the number of employees in each compliance unit.

The top charts in the three figures show that unadjusted rates of pay increase were widely dispersed and often considerably above the 7-percent standard. The nonunion pay-rate increases roughly follow a normal distribution; the union increases, in contrast, are bunched in the 8½-to-9½-percent range.

As our foregoing discussion of the differences between reported actual increases and those chargeable under the standards suggests, the disparity in the rates of pay increase for union and nonunion workers is narrowed considerably by the removal of the portions that are not chargeable.

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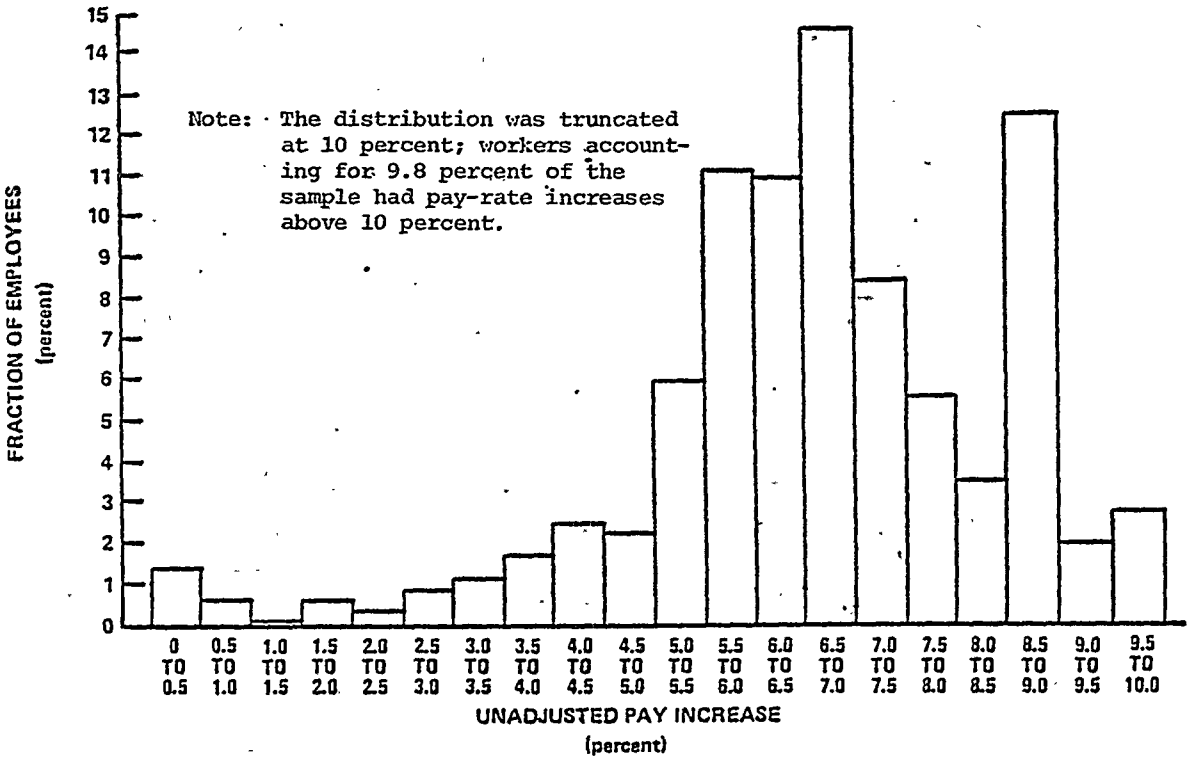
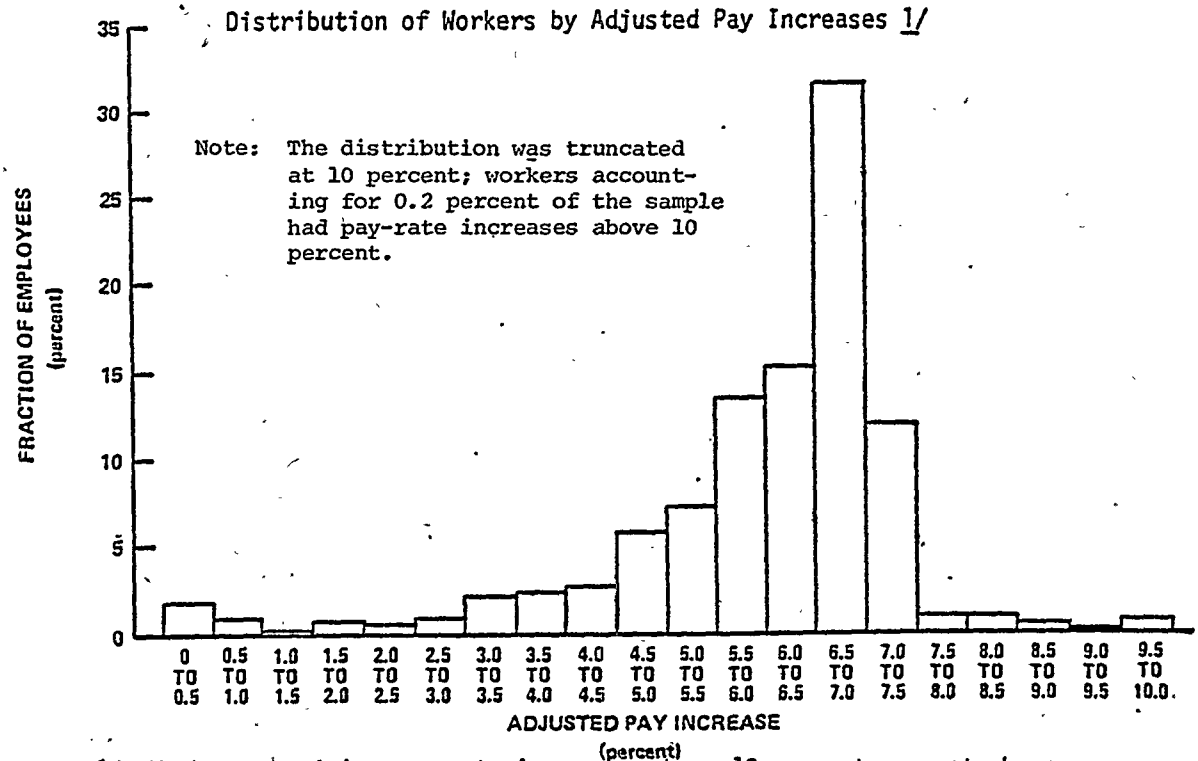
Figure 2

Distribution of Workers by Unadjusted Pay Increases 1/



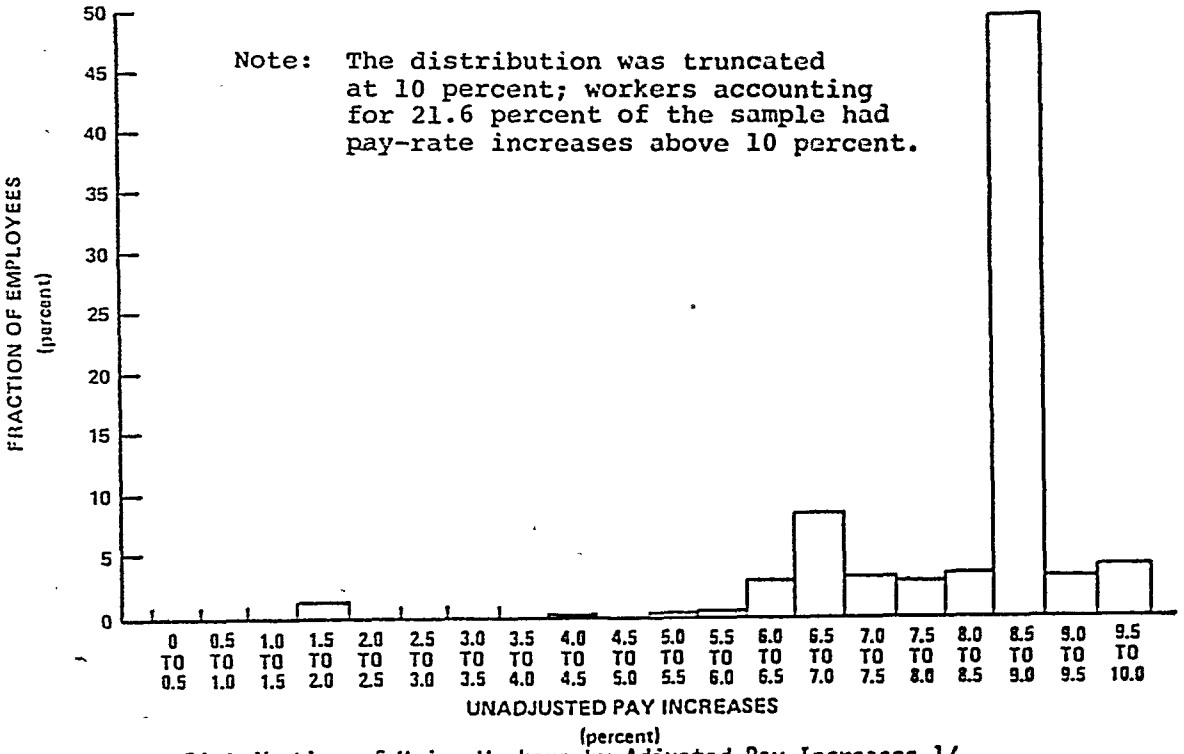
Distribution of Workers by Adjusted Pay Increases 1/



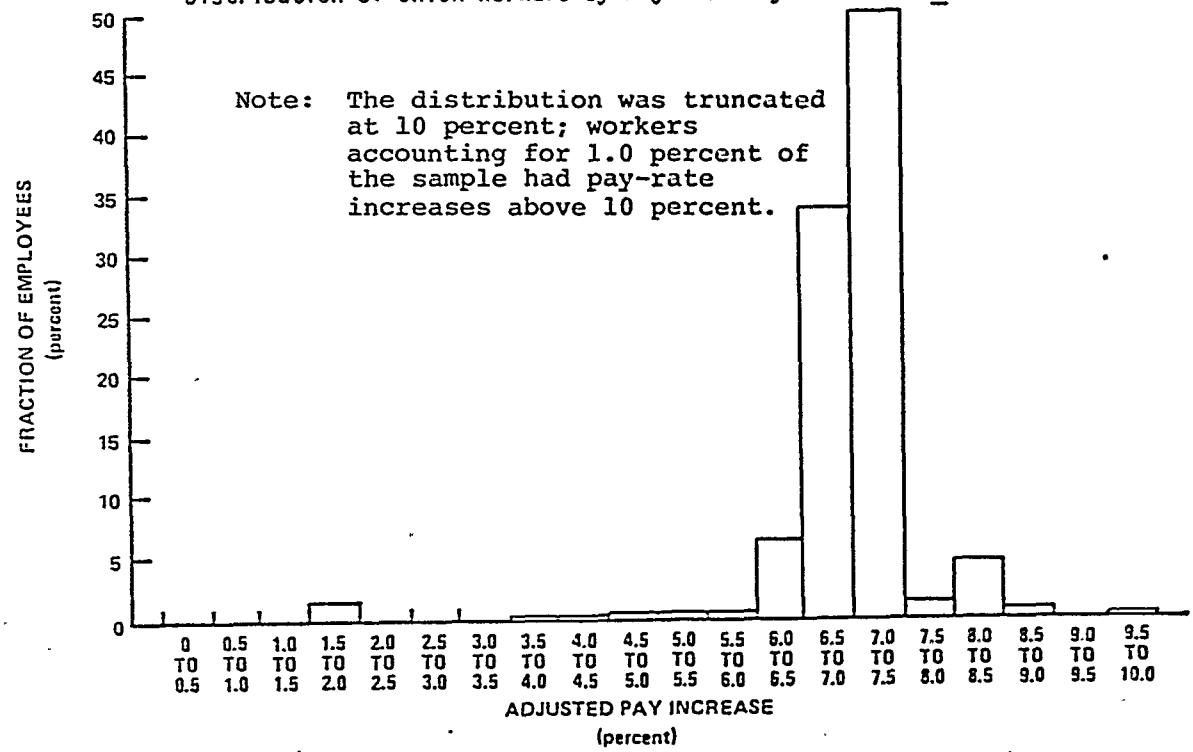
1/ Workers receiving pay-rate increases above 10 percent are not shown.

Figure 3

Distribution of Union Workers by Unadjusted Pay Increases 1/



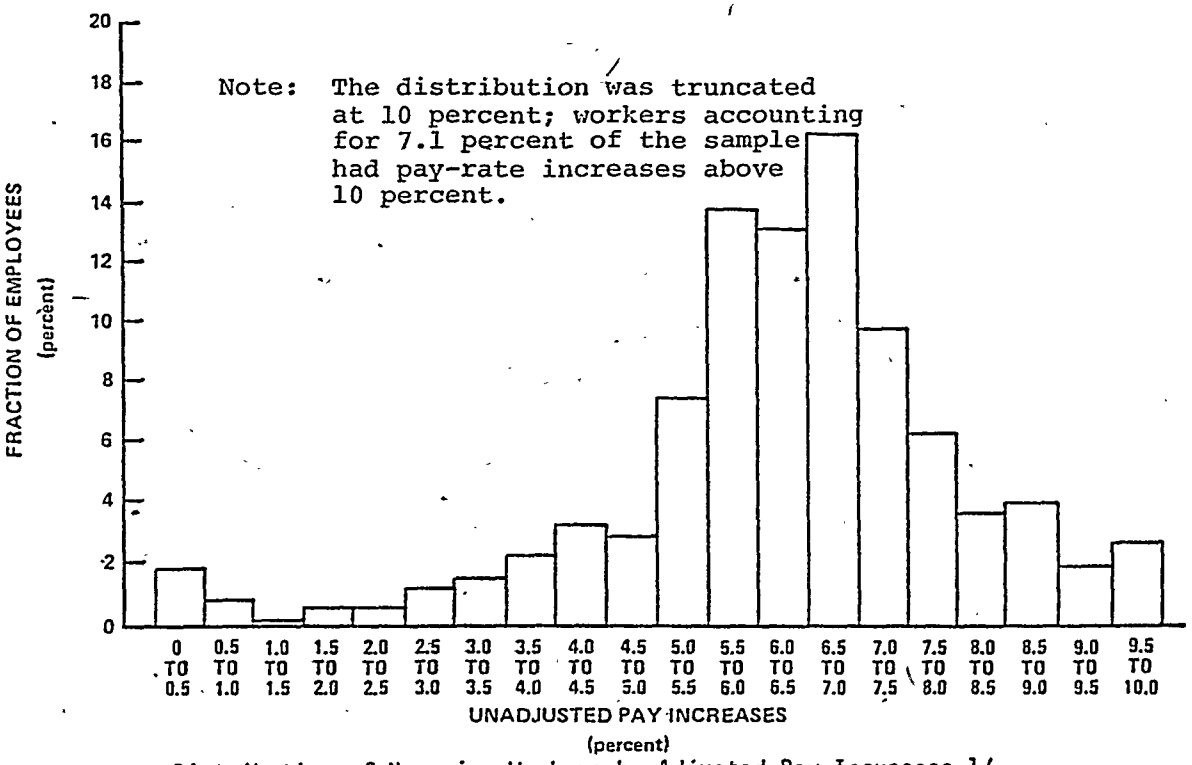
Distribution of Union Workers by Adjusted Pay Increases 1/



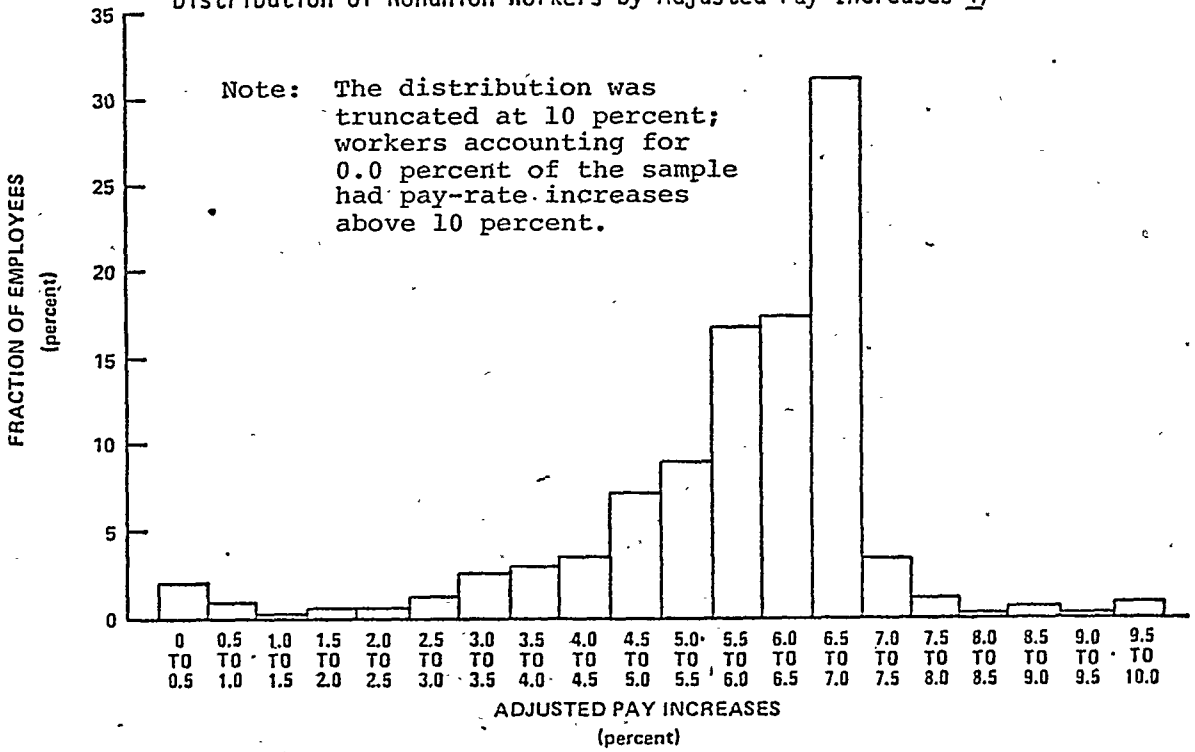
1/ Workers receiving pay-rate increases above 10 percent are not shown.

Figure 4

Distribution of Nonunion Workers by Unadjusted Pay Increases 1/



Distribution of Nonunion Workers by Adjusted Pay Increases 1/



1/ Workers receiving pay-rate increases above 10 percent are not shown.

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With these adjustments, almost a third of the nonunion workers are in the 6½-to-7-percent range, sixty-five percent are in the 5½-to-7-percent range, and only about 5 percent had increases of more than 7 percent. On the other hand, half of the union pay increases are slightly above the 7-percent standard—in the 7-to-7½-percent range. About 34 percent are slightly below the standard—in the 6½-to-7-percent range. The distribution of wage increases for union workers was heavily influenced by a number of major settlements that were slightly above the 7-percent standard. The most notable cases were rubber and autos, where the collective-bargaining agreements were found out of compliance but the companies involved were not listed as noncompliers because of their commitments to take corrective action (most frequently by exercising additional price restraint).

C. Analysis of Company-Specific Price Data

In the first program year, we asked all firms with sales of $250 million or more in the last complete fiscal year before October 2, 1978, to file price, gross-margin, or profit-margin data with the Council. Approximately 1,300 companies were of this size; in their reports they disaggregated their operations into 2,101 compliance units. In addition, we asked 235 smaller companies in selected industries to file price-monitoring forms (PM–1s).

Of the reporting compliance units, 801 filed under the basic price deceleration standard, 546 under the various gross-margin standards available to selected industries, 815 under the profit-margin limitation, and 9 under the professional-fee standard; 165 were exempted from the price standards because 75 percent or more of their revenues came from the sale of excluded products (see Table 6).

Table 6.—*Distribution of Number of Companies by Standard*

[First program year]

	Total by standard	Percent of total	No. of companies reporting by size of company		
			Over $500M	$250-$500M	Below $250M
I. Price deceleration	801	34.3	536	169	94
II. Gross margin	546	23.4	345	155	46
—Percentage gross margin	387	16.6	245	128	14
—Food mfg. proc. gross margin	91	3.9	68	20	3
—Refiners gross margin	68	2.9	32	7	29
III. Professional fee	9	0.4	4	4	1
IV. Profit margin	815	34.9	471	261	80
—CWPS granted/pending	206	8.8	186	21	2
—Self-administered	375	16.1	195	176	64
—Insufficient product coverage	234	10.0	153	64	17
V. Exempt	165	7.1	105	48	11
Total number of filings	2,336	100.1	1,468	638	235

The following analysis is based on samples of these PM–1 forms; not all of the forms have been entered in our computer file, in part because we did not require computer-compatible forms until the second quarter of the second program year.

During the first program year, 871 compliance units reported price data to the Council. (This number is greater than the 801 that filed under the price deceleration standard because it includes some compliance units that received exceptions, permitting them to file under the alternative profit-margin limitation, on the grounds of uncontrollable costs or inability to compute.) The revenue-weighted average price increase during the base period for a sample of 83 percent of these firms was 6.35 percent. This translates to a 5.8-percent average allowable price increase after account is taken of the required price deceleration of 0.5 percentage point and the maximum (9.5 percent) and minimum (1.5 percent) allowable program-year increases. This is virtually identical to the 5.75-percent average allowable increase that we estimated on the basis of aggregate data for the entire economy when the standard was first promulgated.

The fact that the actual average price increase of 9.36 percent for this group during the first program year far exceeded the 5.8-percent limit does not necessarily signify widespread noncompliance because many of these firms received exceptions to the price deceleration standard. Because this sample underrepresents compliance units that received profit-margin exceptions (since fewer of them filed price data) it cannot be used to estimate the slippage attributable to the availability of this exception.

When we remove from the sample the compliance units that received profit-margin exceptions, we find that the revenue-weighted average price increase of the remaining units during the first program year was 6.44 percent, as compared to an average allowable increase of 5.92 percent for this group (see Table 7). Compliance units accounting for 87 percent of the revenues in this sample reported price increases below their allowables. Moreover, the compliers were highly concentrated near those allowables: 50 percent of them were no more than a half percentage point below their ceilings. This suggests that the standard was constraining for a large proportion of the companies (see Figure 5).

Table 7.—*Compliance Units Filing Under the Price-Deceleration Standard*

	Revenue share [1]	Fraction of compliance units [2]	Average allowable price increase (percent)	Average actual price increase (percent)	Difference (percent)	Contribution to total price increase (percentage points)
	(1)	(2)	(3)	(5)	(6) (4)-(3)	(7)
Reported compliance with price standard	.8715	.8217	5.77	4.59	−1.18	4.00
Notices of probable noncompliance (sent or in process)	.0821	.0503	7.43	22.18	14.75	1.82
Under analysis	.0465	.1280	6.07	13.33	7.26	0.62
Total	1.0000	1.0000	5.92	6.44	0.52	6.44

[1] Total revenues (thousands) = $227,351,071.
[2] Total compliance units = 656.

Eighteen percent of the compliance units, accounting for 13 percent of the revenues, reported price increases above their allowables. Not all of them are out of compliance; many will ultimately be found to have properly self-administered exceptions, or to have been eligible for alternative standards, or to have misinterpretated the standards or made calculation errors.

Thirty-three notices of probable noncompliance have been sent, or are in process of being sent, to companies in this sample. Analyses of the other 84 cases of overage are continuing, usually in discussions with the company. Some of these discussions have resulted in the companies taking corrective action to come back into compliance. (There have been over 20 publicly announced corrective actions totaling over $130 million.)

The 6.44-percent price increase by compliance units in the sample that were not granted profit-limitation exceptions is, of course, considerably below the 12.5-percent increase in the CPI during the first program year. The 6.1-point difference between these two figures is explained by three factors: (1) The rapid increases in some components of the CPI that are not covered by the standards (most notably mortgage interest costs); (2) the passthrough of some large raw-material cost increases (most notably crude-oil costs) under the profit-margin limitation and the various gross-margin standards available to particular industries; and (3) some noncompliance.

We have already discussed the first of these, in contrasting the behavior of prices covered and the prices not covered by the standards. However, since the sample includes some compliance units that were eligible for alternative standards or that self-administered exceptions, the 6.44-percent price increase is not indicative of actual price increases by firms on the price deceleration standard. Thus, to estimate the slippage and noncompliance attributable to the profit-margin exception, we must restrict the sample of compliance units filing price data further to exclude all firms that were eligible for an alternative standard: this cuts the sample to 317. Compliance units in this sample that filed under the price deceleration standard had a revenue-weighted program-year price increase of 5.57 percent; their allowable increase was 6.61 percent. The concentration of the price increases of this group just below the allowable is even more pronounced than in the larger sample (see Figure 6), probably because this smaller sample excludes many companies that have self-administered exceptions or that have converted to an alternative (gross margin) standard.

Compliance units in this sample that were granted profit-margin exceptions on average exceeded by 13.23 percentage points the price increases they would have been allowed had they remained on the basic price deceleration standard. (We cannot estimate the portions of this excess attributable respectively to noncompliance and to the fact that the profit-margin exception simply permits larger price increases.) Slippage and noncompliance thus contributed 4.66 percentage points to the total price increase for this group (obtained by multiplying 13.23 by the revenue share of companies under the profit-margin limitation).

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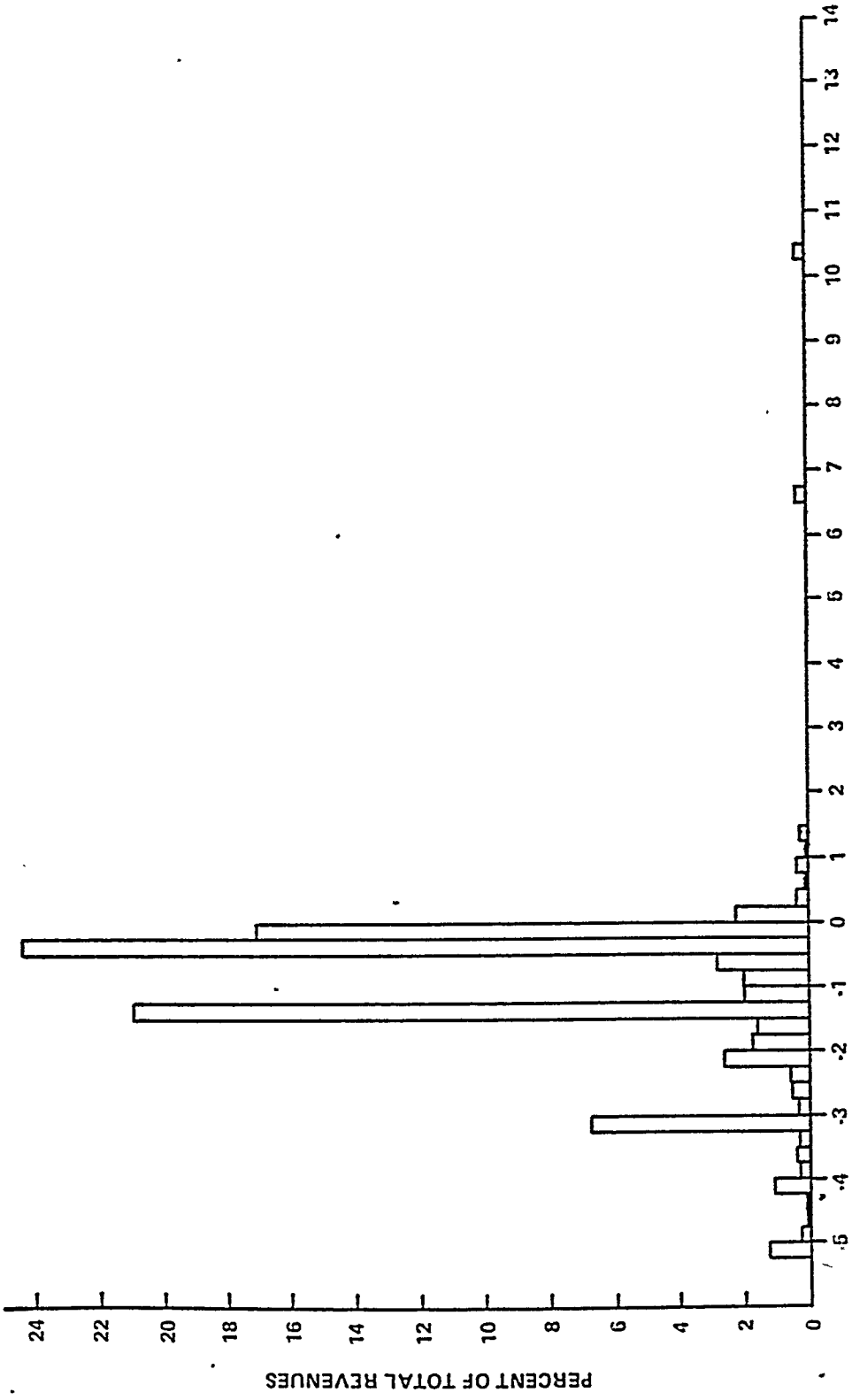
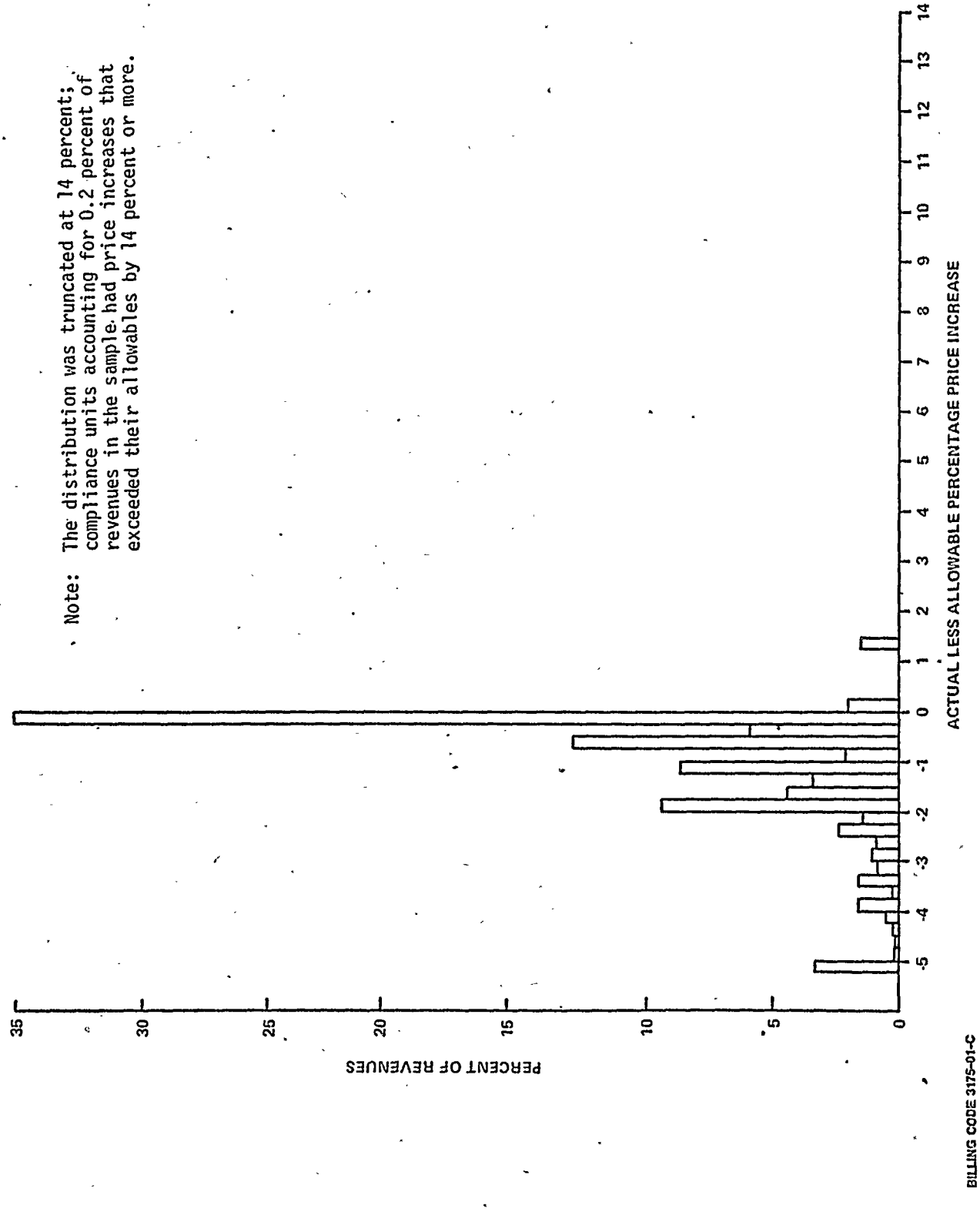
Figure 5

Distribution of Revenues by Difference Between Actual and Allowable Price Increases (All Compliance Units Filing Under the Price Deceleration Standard)



Note: The distribution was truncated at 14 percent; compliance units accounting for 5.77 percent of revenues in the sample had price increases that exceeded their allowables by 14 percent or more.

Figure 6
Distribution of Revenues by Difference Between Actual and Allowable Price Increase
(All Compliance Units Filing Under the Price Deceleration Standard that are not Eligible for an Alternative Standard)



Note: The distribution was truncated at 14 percent; compliance units accounting for 0.2 percent of revenues in the sample had price increases that exceeded their allowables by 14 percent or more.

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These calculations are summarized in Table 8. Compliance units under the price deceleration standard increased prices on average by 5.6 percent, whereas companies with profit-margin exceptions (to the price deceleration standard) increased theirs by 19.8 percent. Weighting these two figures by revenue shares, we obtain a total price increase of 10.6 percent. This increase, calculated from company specific data, is remarkably consistent with increases in comparable economy-wide price indexes during the first program year, which ranged from 9½ percent to 11 percent. The Gross National Product deflator rose 9.6 percent; the fixed-weighted Personal Consumption Expenditure Deflator increased 10.0 percent; the CPI less mortgage interest costs—which are not covered by the standard and are not passed through under the profit-margin limitation—rose 10.5 percent; and the Producer Price Index for finished goods increased 11.2 percent. This suggests that price increases of companies eligible for the various gross-margin standards—which are not included in our sample but are, of course, included in the comparable aggregate indexes—were roughly equivalent to those not eligible for these alternatives.

Table 8.—The Price Standard and Profit-Margin Slippage

	Price change	Contribution to total price increase [1]
Price-deceleration standard		
Allowable	6.61	4.28
Underage	−1.44	−.93
Excess	0.40	.26
Acutal	5.57	3.61
Profit-margin limitation		
Allowable	6.58	2.32
Slippage and Noncompliance	13.23	4.66
Actual	19.81	6.98
Total		10.59

[1] The contributions were calculated by multiplying the first column by the relative revenue shares of compliance units under the price deceleration standard and the profit-margin limitation (.6476 and .3524, respectively).

Because the average allowable price increase for compliance units not eligible for the alternative standards was 6.6 percent—about one percentage point above the 5¾ percent estimated average allowable for the entire economy—it would appear that compliance units eligible for the alternatives had below-average base-period price increases. This implies, in turn, that the noncompliance and slippage among companies eligible for the various gross margin test (i.e., the difference between their actual price increases and what they would have been allowed under the price deceleration standard) was greater than the slippage among companies that were not eligible for an alternative standard. This is no way to test this conclusion, because price data are not reported by compliance units under these alternative standards. We do know, however, that the combination of slippage and noncompliance in petroleum refining and marketing was much larger than 4½ percent—the estimated profit-margin slippage for compliance units not eligible for alternative standards—primarily becasue of the passthrough of a 56-percent increase in the cost of crude oil (see the Council's *Petroleum Prices and the Price Standards*, February 25, 1980). Similarly, the slippage in the food processing and distribution sector appears to have been about 5½ percentage points: aggregate data show a base-period increase of about 4½ percent and a program-year increase of 10 percent.

D. Conclusion

In this section, we have examined the efficacy of the standards program in restraining wage and price inflation. All of these analyses confirm our impression, based on day-to-day dealings with companies, that it has induced considerable restraint. Although the inflation rate accelerated markedly during the program period, most of this acceleration can be attributed directly to the passthrough of a surge in raw-material costs. We never expected the standards program to prevent such a passthrough, nor did we intend it to do so: any attempt to limit raw-materials costs or their passthrough would have produced serious distortions and shortages.

Our statistical analysis suggests that, had the standards not been in place during the year and a half ending in March 1980, the annual rate of increase of labor compensation would have been almost 2 percentage points higher, the underlying rate of inflation 1 to 1½ percentage points higher, and the overall inflation rate almost ½ to ¾ percentage point higher.

The social benefits of the program depend, of course, on the gains from reducing inflation. Such gains cannot be measured directly. If, however, we are willing to take as given the social commitment to lower the inflation rate, then we can measure the benefits of the program by referring to the social costs of reducing the inflation rate by alternative methods—namely, additional fiscal and monetary restraint. A conservative estimate, based on recent econometric evidence, is that, in order to generate a sustained lowering of the underlying inflation rate of 1 percentage point by fiscal and monetary restraint alone, we would have to increase the unemployment rate by 1 percentage point. This translates into a 2-percent reduction in output, or 47 billion dollars of lost GNP. These estimates are, of course, inferential and are subject to statistical error; nevertheless, even if they were off by several orders or magnitude, the social benefits of the standards program would remain extremely large.

The social costs of the program are much harder to quantify; they are reflected in the administrative burdens imposed on companies and in any loss of output caused by induced economic inefficiencies and market distortions. (The directly measurable costs of the program as reflected in the Council's budget are miniscule compared to the apparent social benefits.) Perhaps because of the substantial flexibility in the standards, however, we have seen no convincing documentation of significant induced inefficiencies.

Of course, documentation that the pay and price standards were beneficial during the first year and a half does not, in itself, demonstrate that they should be continued. The critical question is whether or not these standards can continue to be a potent force for wage and price restraint in the year ahead. The answer to this question depends in part on economic conditions during the next year and in part upon the degree to which strains within the standards program have made it less viable.

There is now a consensus view that the economy has moved into a recession. It may be argued that standards are not needed during recession because market forces will restrain pay and price increases. On the other hand, it can be argued that standards are most needed during a slowdown or a recession in order to make the slowdown work as much as possible toward reducing the underlying inflation rate. This argument is especially forceful when the recession takes place in the aftermath of a large increase in consumer prices, because these increases continue to provide pressures to increase wages in order to catch up for past decreases in the standard of living, despite the fact that labor markets are weakening. Finally, it can be argued that it is necessary to keep the standards in place to prevent another serious surge of inflation when the economy begins to recover in late 1980 or early 1981, particulary since the underlying rate of inflation is expected to hover near double-digit rates through most of the recession.

III. Major Issues in the Design of the Third-Year Price Standards

A. Threshold Issues

The foregoing analysis suggests that the standards have helped to limit the rate of inflation. Because inflation continues to be a serious problem, despite the onset of recession, we expect that the pay/price-standards program will be continued. We recognize factors which suggest the opposite, however. There is some basis for the view that the effectiveness of programs like these may diminish over time and that the distortions and inefficiencies they introduce—no matter how flexible their design and administration—become increasingly burdensome. In addition, the recession may tend to make such standards less useful. While, therefore, we expect to carry the present program into a third program year, we solicit public comment on the general question of whether a third year of pay and price standards following the general outlines of the first two years is a useful component of an anti-inflation program. We ask that those who respond in the negative give serious consideration to what alternative program, if any, would be more desirable.

Assuming that the present program is continued, there is another threshold question that must be resolved before deciding the form of the third-year standards: whether it is better to proceed, as in the past, with standards for a 12-month period, or alternatively, whether they should be reevaluated (and modified, if appropriate) within a more limited period of time (e.g., quarter by quarter or every six months). While it can be argued that more frequent modifications are preferable, especially in times when the economy is in an unusual state of flux, the mere possibility of changes in the standards during the year would subject companies to greater uncertainty and render them unwilling or unable to develop effective long-term compliance plans. And, if a major program change were in fact made, it would impose substantial additional administrative costs on both the companies and the Council.

In any event, retaining a 12-month concept for the third program year would not preclude us from modifying the standards during the year if changing economic conditions made this advisable. During the past year, for example, we initially set the third-quarter price limitation at the same level as for the entire two years, but at the same time announced that, if price developments earlier in the year suggested the need for more restrictive quarterly limits, the third-quarter ceiling might be adjusted downward. And then, in late March, after the annual rate of increase of the CPI reached 18 percent, we announced a tightening of the third-quarter limit. Similarly, we could loosen the standards within the framework of an annual program. For example, during this past year, we developed a modified standard for companies that use a significant amount of gold and/or silver, and we adjusted the price limitation for airline companies that had experienced large increases in fuel costs.

Assuming that we retain a 12-month program period, the remaining price-standard issues are best considered in the following order: (1) The price limitation versus cost passthrough, (2) the level of the aggregate price standard, (3) the choice of a base period, (4) adjustments to the base period, (5) the range of allowable price increases, (6) a one-year versus a three-year cumulative standard, (7) changes in the profit limitation, (8) excluded products, (9) modified price standards, (10) company organization, (11) self-administration of uncontrollable-cost exceptions, and (12) price prenotification. In discussing these issues and expressing our preferences for particular resolutions, we are influenced by the consideration that the less radical and extensive the changes, the more both the Council and the affected companies can benefit from their experience over the past two years. At the same time, some changes are necessary, and others might even reduce the administrative costs of the program.

B. Specific Issues

1. *The Price Limitation versus Cost Passthrough.* The basic price limitation is cast in terms of a company's average rate of price change for all of its products. This approach gives companies maximum opportunity to adjust their *relative* prices in response to varying demand and supply conditions, while providing for *overall* restraint in their pricing. The second-year standard limited a company's average rate of price increase over the first two program years to its average increase over the two-year base period. It has been suggested that this standard should be replaced by one permitting passthroughs of all costs (like the current profit limitation), rather than having profit restrictions apply only when companies are faced with uncontrollable cost increases or are unable to make price calculations. In the past, we have rejected this suggestion, preferring the price limitation for the following reasons:

- Price limitations involve fewer accounting complications and are easier to monitor than cost passthroughs.
- Price limitations do not vary with changes in costs. This provides companies with incentives to resist cost inflation.
- Price limitations permit firms the full benefits of increased productivity.
- So long as exceptions are provided for companies that cannot comply with the price limitations because of uncontrollable cost increases, there is no inherent inequity in having the price limitation as the basic standard. The Council has approved exceptions for full cost passthrough in individual cases and has approved passthroughs of particularly large, uncontrollable increases in the costs of specific inputs (e.g., gold and silver, and airline fuel).

These last specific adjustments demonstrate our commitment to enabling companies to remain on the price limitation, rather than their resorting to the cost-plus-profit limitation. It was to improve the likelihood of their being able to do so that the Price Advisory Committee recently recommended that we revise the overall price limitation upward for all companies to reflect the recent increase in the pay standard to the 7½-to-9½ percent range. In declining to follow that recommendation, we reasserted our preparedness to adjust price limitations for individual companies or industries on an *ad hoc* basis to account for unusually severe increases in cost, whether of labor or other inputs. We renew that pledge, and invite reasonable proposals to accomplish this objective.

2. *Establishing the Level of Aggregate Price Standard.* For the first and second program years, the aggregate price standard was derived from the pay standard, assuming a constant percentage markup of prices over unit labor costs (i.e., constant labor and nonlabor income shares) and a trend productivity growth rate of 1¾ percent (the average increase during the previous 10 years). If the nexus is retained in the third year, three determinations must be made: (1) The level of the pay standards, (2) the estimate of trend productivity, and (3) the difference in the amounts of slippage inherent in the pay and price standards.

The pay standard now in effect is a range of 7.5 percent to 9.5 percent. Under it, annual pay-rate increases are expected in normal circumstances to average about the midpoint of the range.

As a result of the recent collapse in productivity growth, the 10-year-average measure of trend productivity growth has decreased from 1.74 percent in 1977

to 1.35 percent in 1979. Some argue for the use of a more recent time period for calculating this variable, on the ground that the 10-year average overstates the current trend rate.

Conceptually, the measure of trend productivity should be based on relatively recent data, which are more relevant to current costs and pricing decisions. At the same time, the data must extend over a period sufficiently long to encompass experience from both the expansionary and contractionary phases of the business cycle, in order to produce a measure that is relatively stable and insensitive to cyclical influences.

The Council chose the 10-year period because it met these objectives. The ten years ending in 1977 incorporate approximately two complete business cycles and produce a relatively stable index. This can be seen clearly in Figures 7 and 8, which compare a ten-year trend with a six-year and a four-year trend, respectively.

Assuming an 8.5-percent pay standard and equal slippage for pay and price, the aggregate price standard for various productivity growth trends would be as follows:

Productivity trend:	*Aggregate price standard*
1.75 (current assumption)	6.75
1.35 (new 10-year trend)	7.15
1.25 (4-year trend)	7.25

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Figure 7
Growth Rate in Output Per Hour, All Persons, Private Business Sector
(annual data)

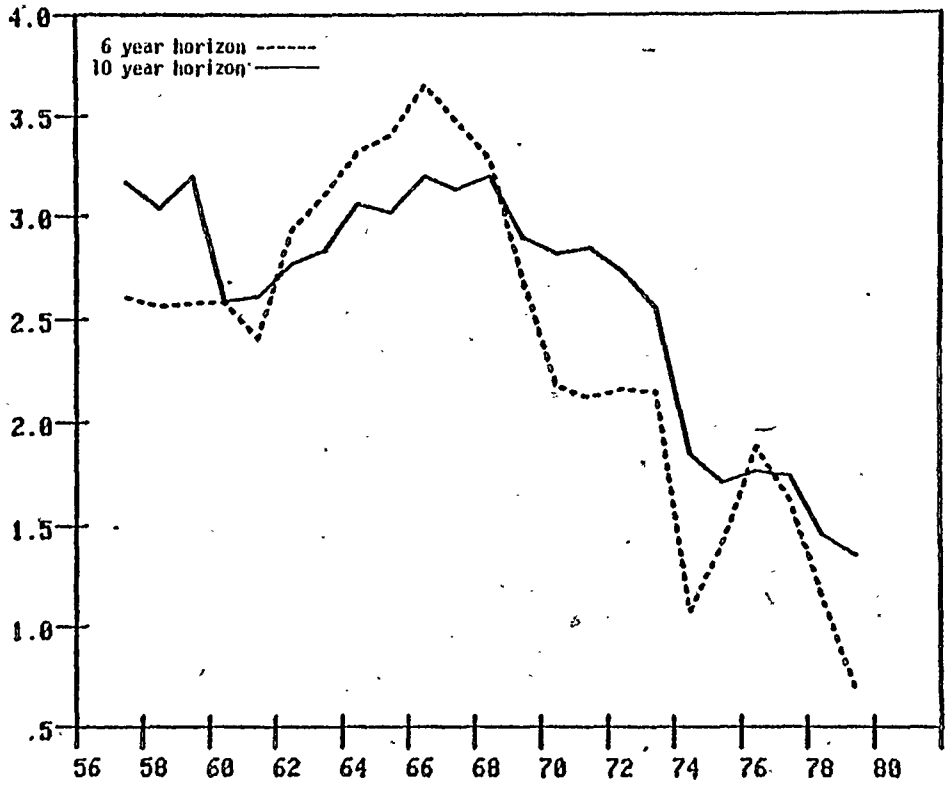
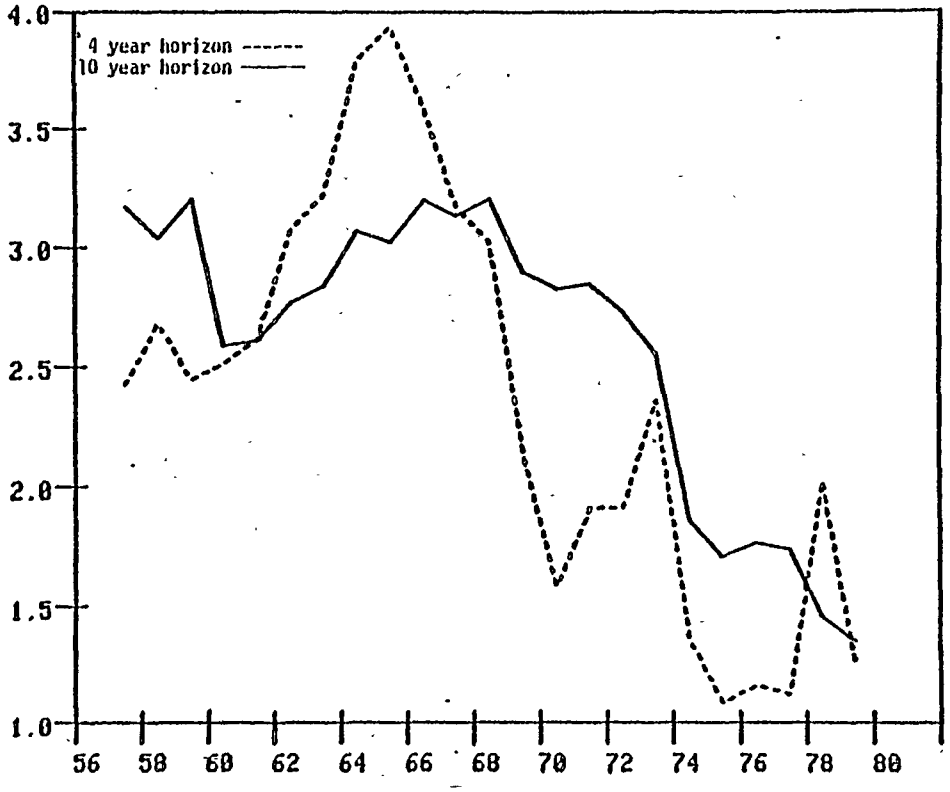


Figure 8
Growth Rate in Output Per Hour, All Persons, Private Business Sector
(annual data)



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As noted in Section II, the apparent slippage on both the pay and price sides during the first program year was about 1½ to 2 percentage points. Most of the slippage in the price standard is attributable to the passthrough of substantial raw-material cost increases; a large portion of the pay slippage resulted from a 9.4-percent increase in the minimum wage, which affected the wage increases of the 35 percent of the workforce excluded by the low-wage exemption. There should be less slippage in the pay standard during the second and third program years, because the minimum wage increased by only 6.9 percent in 1980 and will go up by 8.0 percent in 1981; both increases are below the 8.5-percent midpoint of the current pay-range standard. There should be less slippage on the price side as well, because raw-material price increases should be much more moderate as world economic growth slows. Whether the equality of slippage in the pay and price standards can be expected to continue is uncertain.

Once an aggregate level is established, the next step is to compare it to the aggregate base-period price change and then translate that into company-specific price limitations. Thus, for the first two program years, the aggregate two-year price standard was 13 percent; because the aggregate price change during the 1976–77 base period also was 13 percent, the two-year price limitation for each company was set equal to its cumulative price increase over the 1976–77 period.

Similar logic would be followed to establish company-specific third-year price limitations. The three-year aggregate standard would be calculated by compounding the aggregate two-year standard (13 percent) with the aggregate price standard for the third year. For example, if a 7.15-percent standard were chosen for the third year, the aggregate three-year price standard would be 21.1 percent ([[1.13 x 1.0715]—) x 100).

The difference between the aggregate three-year standard and the base-period rate of price increase compounded over three years (20 percent) would be used as the adjustment factor to calculate company-specific three-year price limitations. Continuing the above example, we subtract 20.0 percent from 21.1 percent to obtain the adjustment factor of 1.1 percentage points. Thus, an individual firm would calculate its allowable three-year price increase by compounding its average annual base-period price increase over three years and adding 1.1 percentage points.

3. *The Choice of a Base Period.* The logical structure described in subsection 2 implicitly assumes that there is some continuity over time in the differences among companies and industries in their respective productivity and cost trends, and that their relative price changes in the recent past adequately reflect these differences. In other words, the standard assumes that, in general, industries that experienced relatively rapid productivity growth (hence low rates of cost increase and low rates of price increase) in 1976–77 will continue to do so during the program period and that their allowable price increases should be correspondingly lower.

For the first and second program years, we selected the 1976–77 two-year period as the reference period for calculating the price limitation. We excluded earlier years because underlying cost trends had been distorted by the 1974–75 recession and the large energy price increases in 1973/74. We excluded the period since 1977 to avoid penalizing companies that had reduced their rates of price increase in cooperation with the Administration's informal program, announced in January 1978.

These advantages of 1976–77 as a reference period are still valid for the third program year. Moreover, retaining the same base period for the third program year minimizes the administrative costs of the program for both companies and the Council.

There is some sentiment, however, for moving the base period forward on the ground that it would then more closely reflect current cost trends and product mixes. Such a change also would expand the coverage of the program by including products introduced and companies formed during the first two program years.

Nonetheless, incorporating 1978 in the base period would be inequitable, for it would penalize companies that had exercised price restraint under the Administration's anti-inflation program during that period. Incorporating 1979 would be even more unfair; companies that had conscientiously complied with the first-year standards would have relatively lower allowables than those that had not complied. Moreover, if the base period were moved forward enough to encompass the explosion in energy and other raw-material costs, it would be equally unrepresentative for a program period in which the raw-material price increases are expected to abate. Finally, changing the base period would impose additional costs on companies—which would have to recalculate their base-period price changes—and on the Council—which would have to process the revised data.

4. *Adjustments of the Base Period.* While the base period is suitable for the vast majority of companies, we recognize that in individual instances a company's base period may not adequately represent its normal cost/revenue relationships. We anticipated such problems by providing undue-hardship and gross-inequity exceptions designed in part to provide relief in the case of unrepresentative base periods. It has, however, taken us more time than expected to formulate criteria for such relief, because of the difficulty of defining criteria that would permit desirable adjustments without opening gaping loopholes.

Toward the end of the first program year, we began making adjustments for unusual and nonrecurring events during the base period—e.g., unusually high start-up costs, floods, fires, and strikes. More recently, we have provided relief for companies whose base-period profits were temporarily depressed because of readily identifiable, transitory, noncyclical developments.

Other criteria for adjusting base periods have been suggested to us but not accepted. For example, some companies have asked that they be allowed to raise their profit margins to an industry-wide average. This would have the effect of substantially increasing the average profit margin, because, of course, every company below the average would move up to it whereas no company above the average would be forced to come down to it. The result of such a universal acceptance of the propriety of catch-ups would be a slippage in the standards so serious as to threaten their effectiveness.

It has also been suggested that base-period adjustments be allowed for any company (or compliance unit) that incurred a loss during the base period. We acknowledge that a loss position cannot typically be representative of a viable long-term operation. Nevertheless, the Council has not automatically made adjustments in such cases, for several reasons. First, it is not necessarily an undue hardship for a compliance unit that is part of a larger company to be in a loss position; many companies may carry nominally losing operations for considerable periods of time for valid business reasons. Second—and more important—it is difficult, if not impossible, to develop workable and equitable criteria for an adjustment. Zero growth in profits might sound more reasonable than a negative number, but those who object to a negative number would surely object also to zero. Moreover, it is arbitrary to distinguish between companies slightly below and those slightly above zero. The only logical outcome of that process

would be something that also has been suggested—that the Council set "reasonable" rates of return for companies with negative—or low—base-period profits. It seems clear, however, that we will not allow ourselves to be drawn into rate-of-return regulation for large segments of the economy.

Although none of the base-period adjustments made by the Council to date have involved the price limitation, we have adjusted program-year price changes to achieve the same result, as in the above-cited cases of airline companies and companies using substantial amounts of gold and/or silver.

We believe that adjustments of base-period data will be increasingly important in the third program year, because the inequities caused by unrepresentative base periods cumulate the longer companies are constrained by their base-period performance. We therefore strongly urge public comments on possible ways of accomplishing this without gutting the standards.

5. *The Range of Allowable Price Increases.* During the first program year, a company's average price increase was not held below 1½ percent, and not permitted about 9½ percent, whatever its base-period rate of price change. In the second year, we narrowed that range to avoid inequitable treatment of firms with very low base-period rates of change without unduly relaxing the standard; specifically, we set the price band at 3½ percent to 8½ percent for the second year alone. Because the second-year standard was a cumulative two-year limitation, the range of allowable price increases for the two years was 5 percent to 19 percent.

To determine the range of allowable price increases for the third year, it is instructive to examine the relationship between alternative ranges and levels of the aggregate price standard. Clearly, raising (lowering) either of these bounds increases (decreases) the aggregate price standard. Table 9 shows the level of the aggregate price standard for various values of the upper and lower bounds, assuming that the allowable rate of increase is set equal to the base-period rate of increase (of course, subtracting a "deceleration" factor would lower each value in the table by the amount of the deceleration factor). The constructed values are based on a sample of 727 compliance units.

Changing the bounds within moderate ranges has little effect on the aggregate price standard. For example, the change in the bounds from 1½ percent and 9½ percent in the first year to 3½ and 8½ percent in the second year had no effect on the aggregate price standard; both pairs yield an aggregate price standard of 6.27 percent (assuming no change in the deceleration factor). Note also that this figure differs little from the aggregate price standard with no upper or lower bound (6.35 percent).

Table 9

Relationship Between Alternative Ranges of Allowable Price Increases and the Aggregate Price Standard 1/

Alternative Lower Bounds	Alternative Upper Bounds					
	No Upper Bound	9.5	9.0	8.5	8.0	7.5
No Lower Bound	6.4	6.1	6.1	5.9	5.8	5.5
1.5	6.5	6.3	6.2	6.1	5.9	5.7
2.0	6.5	6.3	6.2	6.1	5.9	5.7
2.5	6.5	6.3	6.3	6.1	5.9	5.7
3.0	6.6	6.4	6.3	6.2	6.0	5.8
3.5	6.7	6.5	6.4	6.3	6.1	5.9
4.0	6.8	6.6	6.6	6.4	6.2	6.0
4.5	7.0	6.8	6.7	6.6	6.4	6.2
5.0	7.2	7.0	6.9	6.8	6.6	6.4

1/ Based on a sample of 727 compliance units with total sales of $264 billion. The entries in the matrix are levels of the aggregate price standard, assuming no deceleration or acceleration from the base period.

Of course, the upper and lower bounds are not used to set the aggregate price standard; rather, they are intended to change the distribution of allowable increases for reasons of equity. The number of compliance units affected by changes in the range can be determined by reference to the cumulative distribution in Table 10. For example, raising the lower bound from 1.5 percent to 3.5 percent increased the proportion of units affected from 14 percent to 25 percent, but lowering the upper bound from 9.5 percent to 8.5 percent decreased the proportion of units affected from 86 percent to 77 percent.

Table 10—*Cumulative Distribution of Compliance Units by Base-Period Rate of Price Change* [1]

Base-period rate of price change	Percentage of compliance units
less than 0.0	8.6
0.0 to 0.5	10.1
0.5 to 1.0	12.1
1.0 to 1.5	14.3
1.5 to 2.0	17.5
2.0 to 2.5	19.7
2.5 to 3.0	22.2
3.0 to 3.5	25.3
3.5 to 4.0	27.3
4.0 to 4.5	30.3
4.5 to 5.0	35.7
5.0 to 5.5	41.2
5.5 to 6.0	45.8
6.0 to 6.5	52.6
6.5 to 7.0	58.5
7.0 to 7.5	64.0
7.5 to 8.0	70.2
8.0 to 8.5	77.1
8.5 to 9.0	81.6
9.0 to 9.5	86.0
9.5 to 10.0	86.6
10.0 to 10.5	87.9
10.5 to 11.0	88.8
11.0 to 11.5	89.3
11.5 to 12.0	89.3
12.0 to 12.5	90.0
12.5 to 13.0	90.8
13.0 to 13.5	91.4
13.5 to 14.0	92.1
14.0 to 14.5	92.4
14.5 to 15.0	92.6
15.0 to 15.5	92.8
15.5 to 16.0	92.9
16.0 to 16.5	93.5
16.5 and above	100.0

[1] Based on a sample of 727 compliance units with total sales of $264 billion.

6. *One-Year versus Cumulative Standard.* There are essentially two choices for the design of the third-year price standard: (1) A one-year limitation on price increases, measured from the fourth quarter of the second program year to the corresponding quarter of the third year; or (2) a cumulative three-year limitation, measured from the calendar or fiscal quarter immediately preceding the first program year (the base quarter) to the corresponding quarter in the third program year. A variation of the second

approach would be to have a three-year cumulative limitation but to use the fourth quarter of a company's second program year as its base quarter for calculating its third-year increases.

A one-year limitation, by making the third-year limitation independent of actual and allowable increases in the first two program years, would eliminate complexities caused by the need to link changes in prices, gross margins, or profits of compliance units that comply with different standards in different years. It also has the advantage of moving the base quarter closer to the program year. This would expand the coverage of the program because it would permit the inclusion of products introduced, and companies formed, during the first two years. In addition, because the base-quarter product mix is used to calculate program-year price increases, using a more recent base quarter should reduce problems created by changes in product mix since the third quarter of 1978. However, a one-year limitation would penalize companies that did not increase prices as much as their allowable during the first two years, and obviously benefit those who exhausted—or exceeded—their two-year allowables. This would, in turn, provide incentives for companies to use all of the allowable increases in subsequent periods—an inflationary outcome that the Council is determined to avoid.

A cumulative three-year limitation has the advantages of familiarity and continuity; most important, it does not penalize those who did not use all of their allowables. Also, as noted above, it is possible to have a three-year cumulative standard and designate the fourth quarter of the second program year as the base quarter for calculating the third-year price increases, thus permitting coverage of new products and companies and the use of more current product mixes. Incorporation of that property into a *cumulative* (as opposed to a one-year) standard would thus combine the principal advantages of one-year and three-year limitations.

7. *Changes in the Profit Limitation.* During the first two program years, a profit limitation was available to compliance units unable to comply with the price limitation or other price standards because of an inability to calculate price changes or gross margins or because of uncontrollable increases in the prices of purchased goods and services. It was essential to have an alternative limitation available because large numbers of compliance units were faced with mounting cost pressures during 1979 and 1980.

The profit limitation is intended to constrain increases in price approximately to the increases in costs (thus preserving income shares). The second-year limitation consists of two tests, both of which must be satisfied. The first, which is unchanged from the first year, is that the profit margin for the second program year should not exceed the sales-weighted average profit margin for the best two of the compliance unit's last three fiscal years completed before October 2, 1978. The second test, which was tightened for the second program year, is that the compliance unit's second-program-year dollar profits should not exceed its base-year profits by more than 13.5 percent plus any positive percentage growth in physical volume from the base year to the second program year. Base-year dollar profits can be either (1) actual base-year profits or (ii) base-year revenue times the average of the base-year profit margin and the best-two-out-of-three-year average profit margin. In the first year, compliance units were allowed to use the full best-two-out-of-three-year profit margin in calculating base-year dollar profits, rather than having to average it with the base-year profit margin. We estimate that the asymmetry inherent in both of these definitions of base-year profits—allowing companies an upward adjustment if their base-year margin is below the best two out of three (effectively allowing "catch-up"), but not requiring a downward adjustment if the base-year margin is above the best two out of three—resulted in potential slippage a little less than half a percentage point. Companies that qualified for the profit-margin limitation were allowed to increase prices, on average, by an additional 1.3 percentage points because of the optional adjustment of base year profits. Weighting this slippage by the revenue share of companies under the profit-margin limitation, we obtain the above estimate of potential overall slippage (for all companies). Of course, the actual slippage was less than the potential because market conditions did not allow all companies to capitalize fully on the catch-up allowance. The second-year revision cut this potential slippage in half.

a. *Extent of "catch-up".* The extent to which the dollar-profit test permits a partial "catch-up" continues to be a matter of concern. As noted above, it grants some compliance units more than a passthrough of costs plus the stipulated percentage growth in profit. It may, therefore, be desirable to modify the profit limitation further by eliminating the alternative calculation, by simply reducing the amount of allowable "catch-up" from 50 percent to some lesser number, or by making the adjustment mandatory (requiring downward as well as upward adjustments).

b. *Choice of the base period.* During the first two program years, a compliance unit could choose any two of the last three fiscal years before October 1978 as its base period for profit calculations. We recognize that this period necessarily includes at least part of 1975, a recession year, and could include part of 1978, during which an informal anti-inflation program was in effect. Nevertheless, the two-out-of-three option eliminates the adverse effect of any unusual profit margin that might have occurred during one year of this period.

As with the base period for price calculations, the base period for the profit limitation could be moved forward. This, however, would create the same inequities as would a shift in the base for the price limitation, and would not necessarily better reflect current cost trends. In individual cases where the base-period results are clearly unrepresentative of normal operations and produce serious inequities, we have made adjustments (see Section 4), and will continue to do so.

c. *Requiring volume adjustments.* As currently drafted, the profit limitation provides for an upward adjustment of program-year dollar profits if a compliance unit experiences an increase in physical volume. If volumes decline, however, a compliance unit need not make any downward adjustment. Whether or not the standard should be symmetric—that is, an adjustment for volume be made mandatory in both directions—may be significant in the third program year, because significant declines in sales volumes are likely to take place during the recession. The principal problem with a mandatory volume adjustment is that many companies cannot readily develop physical volume indexes; indeed, many

are under the profit limitation for precisely this reason.

d. *Treatment of interest expense.* The definition of profit under the profit limitation includes interest expense—that is, interest must be added to profits in calculating the profit margin. The principle underlying this requirement is neutrality with respect to alternative forms of capitalization. That is, we wanted to avoid favoring one form of financing over another, and excluding interest expense (i.e., treating it as a cost, which can be passed through) would favor debt, as opposed to equity, financing. This approach had profound implications for many companies complying with the profit limitation because of the surge in interest rates during 1979 and early 1980. Particularly affected were retailers, who typically incur large short-term debt to finance inventories and accounts receivable; companies with primarily long-term debt—principally for capital investment—are less affected by short-term fluctuations in interest rates.

Two alternatives to the Council's approach have been suggested: (1) Excluding all interest expense and (2) excluding short-term interest expense. As we have observed, the first of these would discriminate against equity financing (although many would contend that neutrality requires inclusion of rental expense as well as interest expense to avoid discriminating against companies that purchase—rather than rent—structures). The second alternative was adopted in the Nixon Administration's Economic Stabilization Program and seriously disrupted capital markets by creating incentives for short-term financing of even long-term capital projects.

Finally, the sharp downturn in interest rates, which is expected to continue throughout the recession, should make this issue less pressing in the third year. Nonetheless, we solicit public comment on this question.

e. *Adjustments for productivity.* In designing the standards, we have been cognizant of the danger that government interventions like this one can cause inefficiencies. We have been particularly concerned about possible inhibitions of incentives to engage in productivity-improving capital investment. This is a matter of special concern because productivity growth is an effective antidote to inflation, in that it provides a buffer between increases in labor compensation and increases in unit labor costs. Indeed, the recent collapse of productivity growth has been an important contributor to our current inflation problem.

Our concerns are manifested in the standards in various ways, the most important of which is the selection of the price limitation, rather than cost-passthrough, as the basic standard. As we have already observed, companies that meet the basic price test reap the fruits of higher productivity growth in the form of higher profits. On the other hand, cost-passthrough limitations—whether of the profit-margin or gross-margin variety—dilute companies' incentives to engage in costly projects that could improve productivity, for two reasons. First, in many instances, those standards permit passthroughs of the costs that the projects might save. Second, investment prospects may require wider profit or gross margins if the additional investment is to be profitable, or even feasible.

Unfortunately, universal reliance on a price limitation is not feasible because of the need for relief for companies experiencing uncontrollable cost increases. As a result of the world-wide explosion of raw-material costs in 1979 and 1980, many companies were forced to resort to the alternative profit limitation. In addition, gross-margin standards—which provide for passthrough of some, but not all, costs—were developed for certain industries with highly volatile material input costs.

Those who contend that the profit-margin and gross-margin standards have, in fact, inhibited capital investment have suggested that a special adjustment to allowable margins be made for improvements in productivity. In fact, the mix adjustments currently available under the gross-margin standard for petroleum refiners partially compensate for investments that result in changes in the mix of feedstock inputs or refined products. This procedure, and modifications of it, are considered in subsection 9c. Similar adjustments could be applied more generally.

If adjustments were made for every capital investment program or for every improvement in productivity, however, the restraining effect of these alternative limitations would be severely weakened. Moreover, such adjustments would discriminate against companies in industries where the opportunity for substitution of capital for other inputs and/or for productivity improvement is relatively limited. In some high-technology industries, rapid productivity growth is commonplace; in other industries the technology simply does not lend itself to appreciable improvement. Nevertheless, because of the paramount social importance of revitalizing productivity growth, we modified our procedures at the beginning of the second program year to provide that, when the Council grants a request for approval of an exception, it may modify the exception to make allowances for documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital expenditure programs. We anticipated that such a provision would produce a variety of requests, on the basis of which we could formulate criteria that could contribute to productivity growth without producing unacceptable slippage in the program. It elicited only a handful of requests, however—all of them received only recently.

8. *Excluded Products.* Agricultural, fishing, forestry, and mineral products falling within specified groups in the *1972 Standard Industrial Classification Manual* were excluded from the program during its first and second years. The reason for providing an exclusion was, in the case of most of these products, that their prices are set in competitive markets, in which sellers have little control over prices and in which price ceilings might possibly give rise to damaging shortages. The reason for relying on the SIC manual is that its classification scheme is well-known, well-understood, and easily administered.

While we are confident that the broad policies underlying both the exclusion and our reliance on the SIC manual are sound, we invite comment on whether the provision should be redrawn to include products now excluded or to exclude products now included.

9. *Modified Price Standards.* We developed the modified price standards as alternatives for industries for which the price standard is unsuitable. This is the case where (1) price-change indexes are too difficult or burdensome to compute, (2) raw-material costs are highly volatile, or (3) market characteristics necessitate special treatment. Modified standards are available for a number of kinds of companies, including retailers and wholesalers, food manufacturers and processors, petroleum refiners, electric, gas, and water utilities, insurance companies, professional firms, and financial institutions. A discussion of suggested revisions of some of the modified standards follows (no issues have yet been identified for the insurance (705.48 and 705.49), financial-institution (705.50), professional-fee (705.46), and government (705.47) standards, but comments on these standards are, or course, welcome.

a. *Retailers and wholesalers.* The most controversial aspect of the

percentage-gross-margin standard is the provision that allows companies whose percentage gross margins grew during the base period to continue their expansion at the same rate during the program period, but restricts companies whose margins were not growing to the base-year percentage.

Allowing the percentage gross margin to increase has been criticized by some. The Council adopted this policy because equal deceleration in the rate of growth of *dollar* gross margin per unit of output and in the prices of goods purchased for resale implies no change in the rate of growth of the percentage gross margin. Had all companies under this standard been restricted to a constant percentage gross margins, the allowable margin during the first year would have been 25.59 percent, 0.49 percentage point below the actual allowable.

Some retailers and wholesalers, on the other hand, argue that compliance units with zero or negative margin trends should be allowed a minimum positive trend—e.g., an allowable increase of one percentage point. Such a positive floor for the percentage-gross-margin trend has been likened to the 5-percent floor for the allowable two-year price limitation. The analogy is not apt, however, because constancy of the *percentage* gross margin entails a positive growth in *dollar* gross margin per unit (and in prices charged) so long as the prices of goods purchased for resale are going up.

The Price Advisory Committee has suggested that the Council allow a company to choose between (1) continuing to project a positive margin trend or (2) having a dollar-for-dollar passthrough of the amount by which its program-year interest costs exceed its base-year interest costs. This suggestion was prompted by concern that the explosion in interest rates in late 1979 and early 1980 has a particularly profound effect on compliance units subject to the percentage-gross-margin standard. As noted above, the current decline in interest costs should make this less of a problem in the third program year. Nevertheless, the Council invites comment on the issue. Commentators should take note of the fact that the provision of alternatives necessarily introduces additional slippage into the standards, because companies inevitably select the one that allows them the greater price increases.

A separate question that has been raised is whether the Council should specify all of the items to be excluded in calculating gross margin. Currently, under the percentage-gross-margin standard, the retailer/wholesaler gross margin is defined as net sales less the cost of goods sold. Some firms apparently include within the cost of goods sold certain items, such as warehousing and transportation costs, that others do not. Although consistency is desirable, there are so many accounting variations among companies and among industries that the Council could not conceivably specify with the precision desired the elements of costs to be excluded in calculating gross margin. We, therefore, solicit suggestions for other alternatives.

b. *Food manufacturers and processors.* Some food processors and manufacturers have repeatedly asked to have the cost of other items besides the food used in their operations excluded in calculating their gross margin. The alternative gross-margin standard was provided to these companies, however, because of the volatility of farm prices; that is why only the cost of food products used in food manufacturing and processing is excluded in the calculation of gross margin. The processors argue that there are several other elements of uncontrollable costs that are sharply rising and should therefore be passed through; they point specifically to packaging, interest, and energy.

The Council has provided special gross-margin standards to some industries so as to avoid the full cost-passthrough provisions of the profit limitation. The more items that are excluded from the gross margin, the less incentive there is for companies to substitute inputs whose prices are going up more slowly for those whose prices are going up more rapidly—the more, that is, the gross-margin standard takes on more of the infirmities of a profit limitation. Moreover, the profit limitation is available to individual food processors (as well as other companies) that experience particularly large and uncontrollable cost increases.

To the extent that rapidly rising costs of items not excluded under the gross-margin standard are a major problem, an alternative to excluding these specific items from the gross margin would be to raise the allowable growth of the gross margin. This might provide the requested relief, while avoiding the cost-plus character of the other proposed remedy. The Price Advisory Committee has recommended that the Council seek from the industry documentation of the extent of the problem.

c. *Petroleum refiners.* We developed a gross-margin standard for petroleum refiners for the same reason as for food processors and manufacturers: their raw-material costs are large and highly volatile. Unlike the other standards, however, we reviewed and substantially modified this one after the beginning of the second program year. At that time, we required refiners to disaggregate refining and marketing operations from all other operations for purposes of compliance. In addition, we tightened the standard by (1) expressing the limitation in terms of the gross margin per barrel, which has the effect of lowering allowable dollar gross margins if volumes decline, (2) making the output-mix adjustment mandatory, which eliminates an option, and thereby cuts down slippage, (3) specifying more clearly that only the cost of goods sold may be deducted from revenues in computing the gross margin (that is, costs of crude oil and refined product placed in inventory must not be subtracted from revenues in this calculation), and (4) making the intermediate (quarterly) limitations more restrictive than the end-quarter (two-year) limitation. Finally, we stipulated that, effective January 1, 1980, the cost of process fuel used in refinery operations should be subtracted from revenue in calculating gross margins.

This review and modification resolved many of the questions that had arisen during the first program year and that were analyzed in the Council's report, *Petroleum Prices and the Price Standards*, released February 25, 1980. Nevertheless, several important issues remain, particularly with respect to the relationship between the petroleum-refiner standards and national energy objectives. In a report released on May 30, 1980, *The Council's Petroleum-Refiner Standards*, we concluded that the standards strike a reasonable balance between energy goals and restraining inflation, but pledged to continue to review outstanding issues and to develop policy options for the third program year. The two principal areas of concern are (1) investment and energy-conservation incentives and (2) the choice between a quarterly and an annual gross-margin standard.

(1) *Investment and Energy-Conservation Incentives.* It has been asserted that, by limiting gross margins (which include capital and other non-petroleum costs), the petroleum-refiner standard inhibits incentives to invest in expanded or upgraded refinery facilities (e.g., facilities that produce the same or a lighter mix of products with heavier or sourer crude oil), and that, more generally, it may discourage investments or processes that entail costs that have to be recovered in the gross margin. Of course, constraining price increases *always* runs the risk of inhibiting investment incentives, and *any* partial

cost-passthrough standard creates incentives to favor the use of inputs whose costs are passed through. There has been no documentation, however, that the gross-margin standard has significantly curtailed investment expenditures or unduly interfered with energy conservation efforts. This may be because of the availability of input- and output-mix adjustments of refiner margins, which at least partially compensate for changes in non-petroleum costs (including capital costs) associated with changes in the mix of inputs or outputs. Nonetheless, we recognize that possible interference with investment incentives and energy-conservation efforts would become more serious the longer the voluntary standards remain in place. Consequently, we are requesting public comment on the following possible revisions to the petroleum-refiner standard.

Alternative mix adjustment. With the mix adjustments required under the current gross-margin standard, the base-period margin is calculated using the program-quarter (current) proportions of input and output quantities. This procedure compensates refiners for mix-induced changes in non-petroleum costs (including capital costs)—that is to say, it gives them credit for shifts to less costly crude-oil inputs and to more valuable outputs—to the extent that the base-period price differentials reflect current cost differentials. It has been suggested, however, that this last condition is not being met, and, as a result, that the refiners' standard discourages investments that would enable refiners to adjust to a relative decline in lighter crude supplies and a relative increase in the demand for lighter products.

An alternative procedure that would correct for these deficiencies—to the extent they exist—would be to calculate the program-period gross margin using base-period quantities, rather than adjusting the base-period margin using current quantities. The program-period gross margin would thus be the difference between (1) revenues that would have been earned (at current product prices) on the mix of products sold during the base period and (2) the input costs that would have been incurred (at current input prices on the mix of inputs used during the base period. Any increases in actual revenues attributable to a change in the mix of sales toward higher-valued products would thus not appear in the constructed (mix-adjusted) revenues. Similarly, any decrease in costs attributable to a change in the mix of inputs toward lower-valued ones would not appear in the constructed (mix-adjusted) costs, and therefore the resultant savings would not show up in the constructed program-period gross margin. In other words, refiners would retain the benefits of investments, conservation efforts, or other measures that improve the productivity of refining operations—i.e., that produce higher-valued products from lower-costs inputs. (See Appendix B for a numerical example that compares these two procedures.)

To the extent that this alternative procedure encourages investment more than the current procedure does, the resultant increase in refinery productivity would tend to compensate for the reduced price restraint. To the extent that it merely provides windfall gains for investments that have already been made or that would take place in any event, there would be no offsetting advantage. One way to help ensure the former result would be for us to commit now to use such a procedure only in later program years (if any), when investments being considered now would be coming on line.

Mix adjustments with an updated base period. Any mix-adjustment procedure necessarily entails the use of the same quantities in computing the base- and program-period gross margins. The alternative mix adjustment described above holds quantities constant at their *base-period* levels, so as to eliminate inadequacies in the adjustment attributable to obsolescence of the relative base-period prices of different kinds of crudes and products. (When quantities are held constant at *current-period* levels, the mix adjustment uses *base-period* prices, because in this event it is the base-period gross margin that is a constructed rather than an actual one. Conversely, when quantities are held constant at *base-period* levels, the mix adjustment uses *current-period* prices, because the current-period gross margin is the one that is constructed—not actual.)

Under either the current or the alternative mix adjustment procedure, a related issue is whether the base period should be updated periodically. Under the alternative mix adjustment, this would have the effect of updating the quantities used in the mix adjustment. Under the current mix adjustment, this would have the effect of updating the prices used in the mix adjustment.

Under either method, whether updating the base would permit greater price increases depends on changes in relative prices and relative quantities. Individual refiners, of course, might be disadvantaged by the selection of a new base period, just as they may have been disadvantaged by the choice of the original base period. In either case, however, exceptions may be available for companies whose compliance is measured against an unrepresentative base.

Volume decreases. The alternative mix-adjustment procedure described above is designed to encourage improvements in productivity. A separate, but related, issue is whether allowable dollar gross margins should change as volume changes (which in many cases results in productivity changes). In the first program year, we permitted refiners to increase their dollar gross margin to reflect increases in volume. In the second program year, we extended this principle to volume declines, by expressing the limitation in terms of the gross margin per barrel.

Some refiners have argued that, since fixed costs (which constitute most of the gross margin) do not decrease with decreases in volume, the per-barrel calculation unduly restricts their profits. By the same token, of course, the standard rewards productivity increases that arise when volumes increase. Absent a compelling reason to the contrary—which we have not yet seen—we will probably conclude that the objectives of the anti-inflation program are best served by symmetric treatment of changes in volume.

(2) *Quarterly versus Annual Standard.* In the first program year, the refiners' gross-margin standard compared program quarters with a base quarter. In developing the second-year standard, we proposed instead that the "base-quarter gross margin" be the average quarterly gross margin in the base year. On the basis of public comments, we reverted to the base-quarter measure used during the first year.

It is now being suggested that the Council should move to an annual standard for the program year. Some refiners have argued that, with a quarterly standard, the timing of crude-oil and product acquisitions takes on undue importance because the acquisition costs in each quarter affect the allowable prices that can be charged only in that quarter. This may occur even if the acquisitions are placed in inventory, because under customary accounting practices transitory changes in crude-oil and product inventories can affect costs of goods sold. Accordingly, the refiners conclude, a quarterly standard may thwart inventory accumulation objectives or encourage perverse pricing patterns. A quarterly standard also raises problems when there are retroactive crude-oil price increases (like the ones we experienced

last winter) and when firms make annual, but not quarterly, inventory-valuation adjustments.

If we were to adopt an annual program-year gross-margin limitation, we would also consider making the base-period an annual, rather than a quarterly, measure, Conversion to an annual standard would also reduce the likelihood of unrepresentative base-period margins.

d. *Electric, gas and water utilities.* When the standards program was first announced, there was much thought given to excluding rate-regulated public utilities because utility prices are already regulated by various state and local public utility commissions (PUCs) as well as by several Federal agencies. On the other hand, prices charged by some utilities (e.g., power and gas) had recently increased substantially and it was thought that exclusion of such a prominent part of the economy would be undesirable in view of the economy-wide nature and urgency of the inflation problem. Our solution was to recognize the primary role of the State and local PUCs by asking them to administer our standards, while also delegating to them the responsiblility for granting exceptions. This division of labor was intended to minimize the administrative costs of the standards program for utility companies and, at the same time, to ensure that the objectives of the President's anti-inflation program would be considered by the PUCs in their deliberations.

During the past year, there has been renewed interest in excepting utilities from the standards program. It has been argued that the standards are at best duplicative and at worst inconsistent with the approaches and/or criteria used by PUCs in evaluating rate-increase requests. Public comment on this threshold question would be very useful.

Assuming that a standard for utility companies will be a part of the third-year program, we should consider whether it should be modified to make it more compatible with the regulatory practices of the PUCs. A relatively minor change would be to allow utilities the option of using either the Council's base and program years or the test year used by the PUCs. Those who choose the latter would not have the additional computation costs required to demonstrate compliance with the Council's standard. On the other hand, the transition to a different program period would itself raise administrative and computational problems. In addition, allowing companies a choice between alternatives introduces additional slippage in the standards.

A more substantial endeavor would be to recast the standard to coincide more closely with the standards typically used by PUCs. This was the spirit of the Council's recent revision of the gross-margin standard for electric and gas utilities, permitting them either to include in the base-year margin the allowance for funds used during construction of plant not yet in service, or to exclude from the program-year margin a part of the additional revenue requirements attributable to the entry of new plant in service or construction work in process into the rate base.

The ultimate revision would be for the Council simply to defer to the PUCs, not merely in the administration of its standards, as it present, but also in the standards to be applied. The purpose of this change, as of those already made, would not be to weaken price restraint on utility companies, but only to recognize that PUC's already have the legal responsiblity to restrain rate increases in the public interest, and that the superimposition of the Council's standards could be either redundant or a kind of double regulation to which no other industries are subject.

The fact remains, however, that, to the extent that the Council's standards have an additional constraining influence, removing them would constitute a relaxation of the standards. We invite comments on these possibilities.

10. *Company Organization.* At the beginning of the first program year, firms were given considerable latitude (subject to certain accounting restrictions) in organizing themselves for compliance purposes; some chose to report to the Council as one integrated unit, and others disaggregated themselves into separate compliance units. We afforded such latitude largely to hold down companies' compliance costs and to accommodate firms with operations in several different sectors of the economy that are subject to vastly different economic forces.

At the beginning of the second program year, we allowed companies to reorganize themselves for compliance purposes, thus allowing them to respond to internal changes, altered economic circumstances, and simple mistakes in choosing compliance structures. We recognized that this would permit firms to group different portions of their operations in ways that allowed access to various exceptions. While this freedom created some slippage in the price standards, we believed the amount involved would probably not be significant, particularly since we did not generally permit reorganization during the program year.

We must now confront the question of whether firms should again be permitted complete latitude (subject to certain accounting criteria) to reorganize for the third program year. The pros and cons have not changed from last year. Accordingly, at this time we are leaning toward permitting such reorganization between program years, but not allowing reorganization within the year.

Assuming that company reorganization is permitted between the second and third program years, we are considering (at the suggestion of some) whether to *require* some disaggregation for compliance purposes in the third year. The ability of highly diverse firms to report as a single unit has made it difficult for the Council to obtain industry-specific data from major producers in industries exhibiting high inflation rates and to monitor effectively and equitably different companies operating in the same industry. Equally important, the flexibility in company organization has created inequities among companies in their access to modified price standards and in their ability to comply with the price standards. An example of the first situation is that a company with 50 percent or more of its revenues derived from food manufacturing or processing may report all of its operations under the food-processing gross-margin standard, while a company with 49 percent of its revenues derived from these activities would have to disaggregate in order to place its food-processing operations under that standard. An example of the second (and more serious) type of inequity arises from the fact that a comglomerate reporting on a consolidated basis might be able to offset high price increases in one area of its operations with low price increases in another; as a result it might be able to comply more easily than a company that operates only in the industry with large price increases.

Nonetheless, specifying ways for companies to disaggregate for compliance purposes has several problems. Obviously, it reduces their discretion to adopt the organizational structure they consider most suitable. It might disrupt their established frameworks for managing their business activities, or impose additional reporting burdens. It also would be difficult to specify the types of acceptable or unacceptable disaggregations. Most important, it would reduce the flexibility to adjust relative prices in response to changing market conditions—a feature of the price standard that promotes economic efficiency.

On approach would be to require disaggregation (as long as the accounting criteria are met) to the level of the major economic sectors as defined in the Standard Industrial Classification Code (e.g., agricultural production; mining; construction; manufacturing; transportation, communication, and utilities; wholesale/retail trade; finance, insurance, and real estate; and services). Another possibility would be to require a company applying a modified price standard to disaggregate the affected segment of its operations as a separate compliance unit. Finally, we could approach this problem on a case-by-case basis by placing suitable organizational-structure restrictions on grants of exception.

The flexibility accorded to companies in organizing for compliance purposes also can be used to shield the parent company from the adverse publicity of a noncompliance action against one of its compliance units. To increase the incentives for compliance, the Council is considering listing the parent as well as the particular compliance unit.

The Council solicits public comment on all of these issues of company organization.

11. *Self-Administration of Uncontrollable-Cost Exceptions.* The great majority of exception requests during the first two years have been based on uncontrollable cost increases. This is an area where the Council has over time refined the criteria both for eligibility and for the documentation needed to demonstrate it. In fact, by the time we promulgated the second-year price standards, these criteria were so well developed that they could have been incorporated directly into the standards. If that had been done, it would have had the effect of authorizing companies that satisfied the eligibility criteria to self-administer the exception, just as companies eligible for some of the modified standards for selected industries are able to choose them.

Not only has the Council had two years of experience with administering this exception, but the companies as well have undoubtedly developed a good understanding of the Council's approach to these cases. This is evidenced by the fact that most requests for this exception are now routinely approved, although there are still a signficant number of cases where insufficient data are provided.

Because of these developments and because we maintain an interest in reducing compliance burdens, we are considering allowing companies to self-administer uncontrollable-cost exceptions during the third program year. One disadvantage would be the greater likelihood that companies would self-administer exceptions to which they were not entitled, although this danger could be minimized by requiring companies to notify the Council when they self-administer the exception and to submit supporting documentation. An intermediate approach would be to permit self-administration of uncontrollable-cost exceptions only by companies that had already received Council approval during the second program year, on the ground that they are likely to be eligible, and presumably are relatively familiar with the technical questions involved.

12. *Price Prenotification.* We assess compliance with the standards after price increases have been put into effect. Price increases that exceed the standards come to our attention mainly when companies file their quarterly compliance reports. We might, however, improve the program's effectiveness if we assessed compliance before price increases took place, because companies typically are more willing to modify prospective increases than to take after-the-fact corrective action—which may involve price rollbacks. In addition, if we asked companies to notify us before they increased prices, it would facilitate rapid resolution of possible misunderstandings or misinterpretations of the standards and encourage companies to maintain a closer and more current check on their compliance posture.

Such considerations provided the rationale for the price prenotification program that the President announced on March 14. Because it is so late in the second program year, the Council will not initiate a prenotification program this year, and is using this *Issue Paper* to solicit comments on whether there should be a program for the third year and, if so, what it should look like.

The program that the Council is considering would be selective and voluntary, seeking prenotification only where the benefits in improved price restraint clearly outweigh the heavier reporting burdens. Prenotification would not be used to delay or to suspend proposed price increases, as it was in the Nixon Administration's Economic Stabilization Program; the Council does not have statutory suspend-and-delay authority and will not seek it. To the extent that the Council's intentions are misunderstood, a prenotification plan may lead to anticipating price increases that will diminish any benefits of the effort.

The number of companies asked to prenotify would be kept small to limit the reporting burden and to assure timely Council responses. Possible criteria for selection are (1) problem sectors, (2) basic or key industries, (3) company size, (4) price leadership, (5) degree of industry concentration, (6) historical industry pricing practices, and (7) homogeneity of product lines.

To help develop a prenotification program, the Council has consulted a number of outside groups; these have raised a number of problems with which we are still grappling. First, because businesses often do not know the exact size of a price increase until shortly—days or even hours—before the increase is implemented; therefore, it could be hard to prenotify with sufficient lead time. Second, because of differences in company pricing policies, different lead times would be appropriate for different companies; even pricing within a company can vary from region to region and product to product. Third, because data for prenotification are not kept in the ordinary course of business, projecting compliance would involve additional administrative cost. Because of the difficulties involved in developing a workable prenotification program, the Council strongly urges comments on this issue.

Appendix A. Detailed Analysis of Company-Specific Pay Data

This appendix provides more detailed breakdowns of the company-specific pay data issued in Section II–B.

In Table A–I, we provide the base-period and program-period data that were used in calculating the unadjusted and adjusted pay-rate increases shown in Table 4. The pay-rate increases shown at the bottom of the table can be calculated by dividing the appropriate program-period level by its corresponding base-period amount in the upper half of the table.

The nature of the adjustments and exceptions for the program period that were used in calculating the overall statistics in Table A–I are shown in more detail in Table A–II. For each category, we present the percentage of workers who received the adjustments and, for those workers, the increase in the dollar adjustment over the comparable adjustment for the base period and, the percent of the workers' base year pay that these net adjustments represent. In addition, we show the magnitude and percentage amount that these adjustments represent on average for all workers, including those who received no adjustments (i.e., the weighted hourly adjustment).

Although the implications of the patterns were discussed earlier in the report, some additional explanation of the adjustment categories is helpful in interpreting the results.

Table A-I.—*PAY-1 Data Components of Hourly Pay*[1]

[In dollars]

	All workers[2]	Collective bargaining units[3]	Management units	Other units
Pay component:				
Number of base-period reporting workers	7,430,162	1,399,054	2,415,395	3,615,713
Percent of base-period reporting workers	100 0	18 8	32 5	48.7
Base Period (BP):				
BP unadjusted hourly pay rate	$11 34	$12 16	$14 44	$8 96
BP unadjusted wages and salaries	8.70	8 49	11.23	7 09
BP unadjusted hourly cost of incentive pay	0 42	0.13	0 77	0.29
BP unadjusted hourly cost of benefits	2.23	3.54	2.44	1.58
BP total adjustments	0 11	0 01	0 16	0 11
BP adjusted hourly pay rate	11.23	12.15	14.28	8.85

	First year	Annualized	First year	Annualized		
Program Period (PP):						
PP unadjusted hourly pay rate	12.20	12.15	13.51	13.24	15.40	9 55
PP unadjusted hourly wages and salaries	9.37	9.34	9 40	9.24	12.02	7.59
PP unadjusted hourly cost of incentive pay	0.41	0 41	0.14	0 13	0.77	0.28
PP unadjusted hourly cost of benefits	2.41	2.39	3.96	3.87	2.62	1.67
PP total adjustments	0.26	0.24	0.38	0.26	0.29	0 19
PP adjusted hourly pay rate	11.94	11.91	13.13	12.98	15.11	9.36
Unadjusted pay-rate increase (percent)	7.6	7.1	11 0	8.9	6.6	6.6
Adjusted pay-rate increase (percent)	6.3	6.1	7.9	6.8	5.8	5.8
Unadjusted minus adjusted increase (percent)	1.3	1.0	3.1	2.1	0 8	0 8

[1]The percentage increases are obtained by averaging across employee units, using base period employment as weights. Components may not add to total because of rounding.

[2]Pay increases for collective bargaining units are calculated in two ways: The first-year calculations represent the costs of the first year of collective-bargaining agreements, negotiated during the program period, while the annual-average data pertain to the (geometric) average annual rate of increase over the life of the contract. Because of front loading, first-year estimates for multi-year contracts are usually larger than the annual averages.

Table A-II.—*Program Period—PAY-1 Data Adjustments*[1]

Adjustment category	All workers	Collective bargaining units[2]	Management units	Other units
Total program-year adjustment:				
Percent of reporting workers affected	53.2	85.8	47 7	44.2
Hourly adjustment per affected employee:				
Dollars	0.23	0.31	0.27	0.18
Percent	2.0	2.5	1.9	1.9
Weighted hourly adjustment:				
Dollars	0.13	0.26	0 13	0 08
Percent	1 1	2.2	0 9	0 9
Incentive pay/sales commission overages attributable to higher volume:				
Percent of reporting workers affected	6 6	0.5	10 0	6 6
Hourly adjustment per affected employee:				
Dollars	0.05	0.01	0.06	0.06
Percent	0.7	1.3	0 4	0 7
Weighted hourly adjustment:				
Dollars	0.00	0.00	0 01	0.00
Percent	0 0	0.0	0 0	0.1
OOIA payment overages:				
Percent of reporting workers affected	22.8	74.8	6 3	13 6
Hourly adjustment per affected employee:				
Dollars	0.23	0.25	0.25	0.20
Percent	1.9	2.0	2 1	1 7
Weighted hourly adjustment:				
Dollars	0 05	0 18	0 02	0 03
Percent	0.5	1.5	0 1	0 3
Maintenance of health benefits overages:				
Percent of reporting workers affected	35.8	74.9	29 3	25.1
Hourly adjustment per affected employee:				
Dollars	0.04	0 04	0 04	0.03
Percent	0.4	0 3	0 3	0 4
Weighted hourly adjustment:				
Dollars	0.01	0.02	0.01	0.01
Percent	0.1	0.2	0 1	0 1

Table A-II.—*Program Period—PAY-1 Data Adjustments*[1]—Continued

Adjustment category	All workers	Collective bargaining units[2]	Management units	Other units
Overages due to nonchargeable changes in defined-benefit pension funding costs:				
Percent of reporting workers affected	17.3	63.5	8.8	5.0
Hourly adjustment per affected employee:				
Dollars	0.07	0.02	0.13	0.05
Percent	0.6	0.1	0.8	0.6
Weighted hourly adjustment:				
Dollars	0.01	0.01	0.01	0.00
Percent	0.1	0.1	0.1	0.0
Exclusion of unaltered pension plan:				
Percent of reporting workers affected	6.3	2.5	16.3	16.2
Hourly adjustment per affected employee:				
Dollars	0.10	0.26	0.09	0.05
Percent	1.2	3.7	0.7	0.6
Weighted hourly adjustment:				
Dollars	0.01	0.01	0.01	0.01
Percent	0.1	0.1	0.1	0.1
Exclusion of qualified profit-sharing retirement plans:				
Percent of reporting workers affected	6.5	0.1	6.6	8.9
Hourly adjustment per affected employee:				
Dollars	0.15	0.65	0.04	0.04
Percent	1.4	5.4	0.3	0.5
Weighted hourly adjustment:				
Dollars	0.00	0.00	0.00	0.00
Percent	0.0	0.0	0.0	0.0
Overages from formal annual pay plans:				
Percent of reporting workers affected	16.9	NA	20.7	14.3
Hourly adjustment per affected employee:				
Dollars	0.09	NA	0.10	0.08
Percent	0.6	NA	0.7	1.0
Weighted hourly adjustment:				
Dollars	0.01	NA	0.02	0.01
Percent	0.1	NA	0.2	0.1
Effect of fixed-pop. method; promotions:				
Percent of reporting workers affected	7.3	NA	11.7	4.3
Hourly adjustment per affected employee:				
Dollars	0.11	NA	0.17	0.07
Percent	1.2	NA	1.4	1.0
Weighted hourly adjustment:				
Dollars	0.01	NA	0.02	0.00
Percent	0.0	NA	0.1	0.0
Effect of fixed-pop. method; qualification increases:				
Percent of reporting workers affected	3.4	NA	4.2	2.9
Hourly adjustment per affected employee:				
Dollars	0.13	NA	0.12	0.13
Percent	1.3	NA	0.9	1.6
Weighted hourly adjustment:				
Dollars	0.00	NA	0.00	0.00
Percent	0.0	NA	0.0	0.0
Effect of weighted average method:				
Percent of reporting workers affected	2.2	NA	1.5	2.0
Hourly adjustment per affected employee:				
Dollars	0.14	NA	0.22	0.08
Percent	1.3	NA	1.7	1.0
Weighted hourly adjustment:				
Dollars	0.00	NA	0.00	0.00
Percent	0.0	NA	0.0	0.0
Overages from pay exceptions: OWPS approved				
Percent of reporting workers affected	5.7	13.9	4.4	3.3
Hourly adjustment per affected employee:				
Dollars	0.15	0.20	0.15	0.14
Percent	1.5	2.1	1.2	1.4
Weighted hourly adjustment:				
Dollars	0.01	0.03	0.01	0.00
Percent	0.1	0.2	0.1	0.1
Overages from pay exceptions, self administered:				
Percent of reporting workers affected	2.5	2.1	2.4	2.8
Hourly adjustment per affected employee:				
Dollars	0.13	0.31	0.12	0.06
Percent	1.0	1.6	0.9	0.8
Weighted hourly adjustment:				
Dollars	0.00	0.01	0.00	0.00
Percent	0.0	0.1	0.0	0.0

[1]The percentage increases are obtained by averaging across employee units, using base period employment as weights.
[2]Annualized over the life of contract.

Adjustments for incentive pay overages attributable to higher volume are provided in instances where physical volume increases can reasonably be attributed to increased work effort or improved worker performance. COLA payment overages reflect the costs attributable to the difference between the company's inflation assumption for costing out cost-of-living escalators and the stipulated assumption of a 6-percent inflation rate. The maintenance-of-health-benefits exclusion represents the costs above 7 percent involved in maintaining the present levels of health insurance coverage, which the Council excludes from consideration.

There are three retirement-plan adjustments. The first pertains to changes in defined pension funding costs—that is, changes in costs attributable to altered actuarial assumptions or poor performance of the fund's investments. The exclusion for unaltered pension plans pertains to pension plans that link benefits to the level of wages and salaries. In cases where the plans are not amended and the benefit structure remains unchanged, companies could exclude all pension costs from the base period and program-period pay rates. Finally, costs associated with profit-sharing retirement plans may be excluded from the pay calculations when the formulas are not changed.

The adjustments for formal annual pay plans exclude from the chargeable increases all pay increases above 7 percent that are made under pre-existing formal pay plans. Only previously communicated increases are included in this exclusion.

There are two types of adjustments pertaining to the method of computation used to detemine compliance. If the fixed-population method is used, pay increases resulting from promotions or qualification increases are excluded. If the unit-average method is used and the mix of workers changes from the base period, the pay increase calculations can be done using the base-period weights, with the difference in the results being excluded from the chargeable increases.

The final two adjustment categories are for exceptions granted by the

Council or self-administered by the company. The categories for both kinds of exceptions are identical: acute labor shortages, tandem relationships, gross inequity, or undue hardship, and productivity-improving work-rule changes.

The key pages of the Council's PAY-1 form in which the data in Tables A-I and A-II are based are reproduced as Table A-III. The blanks in the form have been completed using the average amounts for all of the reporting companies.

Finally, we have included in Attachment A-I a summary of the pay standards from the Council's *Compendium*. This discussion summarizes the factors guiding the design of the pay standard. Part 6 of this excerpt material provides a detailed description of the criteria for exceptions and exemptions from the pay standard.

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Table A-III

Part III - Pay Rate Data 1/

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
1. Straight-Time Wage and Salary:	$ 8.70	$ 9.34	1
(Projected COLA at ___% CPI: $.___)			
2. Incentive Pay (where applicable):			
a. Sales commission and production incentive pay:	.___	.___	2a
b. Bonuses and other annual incentive pay:	.___	.___	2b
c. Long term incentive pay:	.___	.___	2c
d. Total hourly cost of incentive pay:	0.42	0.41	2d
3. Benefits:			
a. Pay for time not worked	.___	.___	3a
b. Savings and thrift plans:	.___	.___	3b
c. Qualified defined-benefit retirement plans:	.___	.___	3c
d. Health benefit plans:	.___	.___	3d
e. Other insurance plans:	.___	.___	3e
f. Other (total): _____	.___	.___	3f
g. Total hourly cost of fringe benefits:	2.23	2.39	3g
4. Hourly Pay Rate (Sum of 1+2d+3g):	$ 11.34	$ 12.15	4
5. Annual Percent Pay-Rate Increase:	7.1 %		5

IF THE ANNUAL PERCENT PAY-RATE INCREASE IS 7 PERCENT OR LESS (AND FOR MULTI-YEAR AGREEMENTS, NO INDIVIDUAL YEARLY INCREASE IS ABOVE 8 PERCENT) AND DEFINED-BENEFIT PENSION FUNDING COSTS ARE UNCHANGED, THE EMPLOYEE UNIT IS IN COMPLIANCE AND ITEMS 6-8 NEED NOT BE COMPLETED.

1/ Components may not add to total because of rounding.

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
6. Adjustments to pay rate (where applicable)			
a. Alternate base adjustment for bonus plans:	$ 0.00		6a
b. Sales commission/production incentive pay due to higher volume:		$ 0.01	6b
c. COLA payments beyond 6 percent increase in CPI (attach copy of formula):		0.05	6c
d. Maintenance of health benefits cost increase above 7 percent:		0.01	6d
e. (1) Non-chargeable changes in defined-benefit pension funding costs:		0.01	6e(1)
(2) Exclusion of unaltered pension plan:	0.09	0.10	6e(2)
f. Exclusion of qualified profit-sharing retirement plan:	0.02	0.02	6f
g. Overage from formal annual pay plans:		0.01	6g
h. Overage from pay exceptions			
(1) Approved by CWPS (TA__ LS__ WR__ WH__):		0.01	6h(1)
(2) Self-Administered(TA__ LS__ WR__ WH__):		0.00	6h(2)
i. Effect on average wage if fixed population method used, 705B-4(b)			
(1) Promotions (in base period $_ _._ _ _):		0.01	6i(1)
(2) Qualification increases (in base period $_ _._ _ _):		0.00	6i(2)
j. Effect on pay rate if weighted average method used, 705B-4(e):		0.00	6j
k. Total adjustments:	$ -0.11	$ 0.24	6k
7. Adjusted Hourly Pay Rate (Difference 4-6k):	$11.23	$11.91	7
8. Adjusted Annual Percent Pay-Rate Increase:	6.1 %		

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Attachment A–I

Excerpts From Pay and Price Standards: A Compendium

Part I: Design of the Pay/Price Standards

The pay and price standards have been crafted carefully to strike a balance among four principal criteria: effectiveness, simplicity, equity, and economic efficiency.

To be effective, the goals of the standards were targeted to be ambitious enough for widespread compliance to reduce inflation significantly without being so ambitious that compliance becomes impractical. Also for effectiveness, the standards were designed to apply to a wide range of diverse economic activities.

Against the need for widespread coverage, every effort has been made to retain simplicity. And, in fact, the basic standards remain simple for most businesses to apply. However, some increased complexity has come about in response to requests from large businesses for more specificity and due to the need to provide modifications that account for the institutional characteristics and operational realities of certain industries.

For purposes of equity, the standards request moderate restraint from the widest possible range of individuals and organizations; no one group is asked to shoulder a disproportionate share of the burden. But, as in any effort to break into a pay/price spiral, some are bound to be affected sooner or to a somewhat greater degree than others. In recognition of this fact, the standards include several explicit provisions aimed at avoiding the imposition of major inequities.

As with most government intervention in the marketplace, the call for restraint in pay and price decisions runs the risk of inducing some economic inefficiencies by distorting market incentives and signals, resulting in a misallocation of resources. This concern is reflected throughout the standards, evidenced by the general focus on *average* prices and pay rates rather than on those of *individual* products and workers, thus allowing relative prices and pay rates to respond to market conditions.

In designing and revising the standards, adherence to these criteria forced numerous difficult decisions required to balance conflicting objectives. In particular, most efforts to add sensible exception provisions and to provide the degree of flexibility needed to minimize potential inequities and market distortions directly reduced the potential effectiveness of the standards. Conversely, most efforts to increase potential effectiveness increased the risk that compliance would cause inequities and inefficiencies.

Since the standards are sufficiently ambitious to be effective with widespread compliance, it is undoubtedly the case that some inequities and inefficiencies will result. But, these are likely to be small compared to the capricious inequities and the fundamental economic inefficiencies caused by inflation itself.

The pay and price standards were designed to be consistent with each other, assuming a continuation of the well-established historical relationship between prices and unit labor costs.

. . The price deceleration standard provides each firm with its own numerical limitation on price increases during the program year. For each firm, this limitation is derived by deducting one-half of a percentage point from the average annual rate of price increase over the 1976–77 period. If every company in the U.S. economy were to adhere precisely to this standard, the program-year inflation rate would be about 5¾ percent. This figure is obtained by deducting one-half of a percentage point from the 6¼ percent annual rate of increase in the Consumer Price Index, excluding food, during the 1976–77 period.

However, not all firms will be able to achieve price deceleration, due to raw-material price increases, previously negotiated labor contracts, and other factors. To comply with the price standard, these firms will resort to the profit-margin exception, which allows unit-cost increases to be passed through on a percentage basis up to 6½ percent and on a dollar-for-dollar basis thereafter. Given full compliance with the price standard, including this exception, inflation would be about 6½ percent in absence of raw-material shortages or external supply shocks.

The standards were designed to make this price objective consistent with full compliance with the pay standard, constant functional income shares (i.e., constant profit margins and a constant labor share of total national income), and the estimated long-term productivity trend.

The pay standard requests that average increases in wage rates and private fringe-benefit costs per hour not exceed 7 percent over the program year. However, with full compliance, actual private hourly compensation costs will rise by about 7¾ percent. The slippage between the 7-percent pay standard and the 7¾ percent objective is attributable to several provisions and exceptions included to accommodate legitimate concerns about equity and economic efficiency. When mandated Social-Security cost increases above 7¾ percent are included, total compensation per hour will increase by about 8¼ percent. Deducting from this figure the 10-year productivity growth trend of 1¾ percent, unit labor costs will increase by about 6½ percent.

Historically, changes in unit labor costs and changes in prices have been very closely related, reflecting the virtual constancy of functional income shares. The numerical standards were designed purposely to reflect this relationship. Hence, as seen above, the 6½ percent increase in unit labor costs, assuming full compliance with the pay standard, is consistent with the 6½ percent price objective, assuming full compliance with the price standard.

This is not a forecast of inflation rates over the program year. Even with full compliance, if productivity growth rates are below historical averages or if there are major perverse supply shocks, price increases will exceed the above objective.

The pay and price objective for the second program year will, of course, depend on the degree of success during the first year. Therefore the second-year standards will not be formulated until the third quarter of 1979.

A. The Pay Standard

Compliance with the pay standard requires that pay rates increase by 7 percent or less for each of several identified employee groups. The 7-percent standard is not intended as a target for pay-rate increases; it is an upper limit, or cap. Where market forces suggest that smaller increases are warranted, smaller increases should be granted.

The standard imposes a common numerical limit across industries and regions. Although an assumption about *aggregate* productivity growth provides the link between the pay standard and price standard, the pay standard does not vary across industries or firms depending on industry-specific or firm-specific productivity changes. The absence of such productivity adjustment reflects both the effectiveness and equity criteria discussed above.

First, productivity is extremely difficult to measure and the existence of a general adjustment would create a significant loophole, preventing the effective limitation of pay-rate increases.

More importantly, from an equity standpoint, the disparities between productivity growth rates across industries are not attributable to differences in the diligence of the workers involved; instead they are due to the fact that there is more potential for productivity-improving innovations in some industries (for example, manufacturing) than in others (for example, services). Further, there is no logical justification or historical support for the notion that high-productivity-growth industries are high-wage-growth industries. Instead, disparities in productivity growth rates across industries tend to be reflected in divergent price trends; price increases tend to be relatively low in high-productivity-growth sectors and relatively high in low-productivity-growth sectors.

Although the notion of a pay standard tied to company-specific productivity growth has been rejected in the interest of promoting efficiency, incentive pay plans that relate individual pay rates to individual performance receive special treatment.

Incorporation of the above criteria (effectiveness, simplicity, equity, and efficiency) dictate several other general characteristics of the pay standard:

- For reasons of equity and effectiveness, *all* forms of pay are included.
- The standard applies to the sum of different types of pay rather than to each component separately, imposing no restrictions on the mix of pay increases.
- The standard applies the average pay rates for employee groups rather than for individual employees, imposing no restrictions on the distribution of pay-rate increases across individuals.
- The standard applies directly to those components of pay that firms control, and makes certain allowances for pay increases not controlled directly by the company.

1. Components of Pay

Pay rates are defined to exclude overtime pay unless the terms of the overtime pay are changed (say by changing the formula from time and a half to double time, in which case the impact on hourly cost should be estimated and counted as a pay increase).

Private fringe-benefit payments—but not employer contributions to legally-mandated benefit programs such as Social Security, unemployment insurance, and workers compensation—are counted as pay. These private fringe benefits include (but are not confined to) pensions, health insurance, and all forms of paid leave.

The inclusion of fringe-benefit costs is important since these have become an increasingly significant component of labor costs in recent years, and their inclusion is necessary to avoid an obvious loophole: the substitution of fringe benefits for cash wages. However, the standard allows complete flexibility between wage increases and benefit improvements. For example, if the base pay rate for an employee group averages $8.00 per hour in wages with an additional $2.00 per hour in benefits, the total wage and benefit base is $10.00 per hour. Under the standard, the average increase cannot exceed 7 percent annually, or 70 cents per hour. This allowable 70-cent increment can be distributed in any manner between wage increases and benefit improvements.

There are three important qualifications to the provision that all increases in costs of benefits are counted against the standard. First, government-mandated increases—including increases in items mentioned earlier—are excluded from the calculation of pay increases, since these cost increases are beyond the control of the employer.

Second, only the first 7 percent of the increased cost of *maintaining* existing health-plan benefits is counted. It could be argued that the entire increased cost of maintenance of benefits (MOB) should be counted against the standard because (1) these increased costs add to labor costs and exert upward pressure on prices, and (2) not counting the increased cost of MOB discriminates against workers whose employers do not provide elaborate fringe-benefit plans and must therefore pay their own increased medical-care costs out of their increases in wages (which do count against the standard). On the other hand, the equity issue results in a standoff because, without the special provision for this category of fringe benefits, employees with identical benefit packages could be subject to different limitations on wages and salaries due to differences in benefit plan experience or in the timing of premium adjustments. In addition, employers object to including all increases in MOB costs because they have little or no control over them. It was this latter point that led the Council to revise the treatment of maintenance of medical-care costs in the final standards.

Third, for the same reasons, increased costs of maintaining a pension fund, with no improvement in benefits, are not counted against the pay standard. Such cost changes can come about because of changes in funding methods, changes in amortization periods, changes in actuarial assumptions, or plan experiences.

The full amount of all cost increases due to *improvements* in health or pension benefits is counted in determining pay-rate changes.

2. Employee Groups

The 7-percent limitation on annual pay-rate increases does not apply to individual employees. Instead, the standard applies to the *average* pay-rate increases for units of employees. Within each unit, some employees may receive increases above 7 percent so long as these excesses are offset by smaller increases for other employees in the same unit. This flexibility allows employers to adjust individual pay rates on the basis of individual merit and market conditions for different types of labor services, so long as the overall 7-percent limitation is satisfied. This feature of the pay standard promotes economic efficiency and facilitates equitable pay policies.

The separate employee units to be identified under the standard are (1) each collective bargaining unit, (2) all management personnel, and (3) nonmanagement employees not covered by collective bargaining agreements. A collective bargaining unit representing less than 5 percent of all employees in a firm need not be considered separately, but can be combined with the appropriate nonunion group. Any reasonable divisions of the nonunion employees into management and nonmanagement units is acceptable.

Collective bargaining units are required to be identified separately because these employee groups are subject to binding contracts and the contract terms can be altered only at the time of negotiation. The standards therefore apply to the terms of newly negotiated contracts. For nonunion employees, the distinction between management and nonmanagement groups is provided to ensure that management decisions about pay-rate increases provide equitable treatment for nonmanagement employees. If a company can provide an alternative means of demonstrating that this equity condition is satisfied, the two groups may be combined.

3. Application of the Pay Standards to Collective Bargaining Agreements

The pay standard does not apply to existing contractual agreements reached before announcement of the program. Instead, it requires that the annual rate of increase of pay rates dictated by any *new* collective bargaining agreement (any agreement entered into during the program year) be no greater than 7 percent compounded over the contract term. Since these increases are compounded, pay rates can increase by approximately 14½ percent over the live of a two-year agreement and 22½ percent over the life of a three-year agreement. Under such multi-year agreements, however, the total allowable increase must be allocated fairly evenly over the life of the contract—no more than 8 percent of the total allowable increase can occur in any single year of such an agreement. This allows for some "front loading," a common characteristic of labor contracts.

A large and increasing number of collective bargaining agreements have built-in escalators, or cost-of-living adjustments. The actual pay-rate increases generated under these contracts will depend on the actual rates of inflation experienced over the contract term. In order to provide a method by which the parties can determine whether a new contract complies with the standard at the time it is signed, cost-of-living adjustments in multi-year contracts are to be evaluated assuming a 6-percent annual inflation rate. This rate is below the anticipated inflation rate for 1979, even assuming full compliance with the pay and price standards, but is a reasonable assumption to make for the period covered by multi-year contracts. For this reason, the 6-percent assumption cannot be employed in labor contracts covering one year or less. One-year contracts with cost-of-living adjustment clauses must be evaluated retrospectively, using the *actual* inflation rate and hence the actual cost to the employer.

4. Application of the Pay Standard to Nonunion Employee Units

For employee units not covered by collective bargaining agreements, the standard requires that average pay rates in the final quarter of the program year be no more than 7 percent greater than the average pay rates in the base quarter. The base quarter is the last complete fiscal or calendar quarter prior to October 2, 1978, and the terminal quarter is the corresponding quarter of 1979.

In many cases, actual pay-rate increases during the coming year will be based on decisions and commitments made prior to the announcement of the program. In order to provide equitable treatment of union and nonunion units, recognition of these situations is necessary. As a result, when pay-rate increases are dictated by the continuation of a formal, documented annual wage and salary program already in operation, the completion of this program is allowed. Similarly, if future pay-rate increases have already been promised or communicated to the recipient employees, these promised increases are allowed. *Compliance requires, however, that new* pay plans announced during the program year be consistent with the 7-percent standard for the next planning year of the company.

Changes in average pay rates are determined by changes in the pay rates of individual employees and by changes in the composition of the employee group. In some cases, the 7-percent standard would be exceeded solely due to a shift in the composition of employment toward individuals with higher skill levels and, therefore, higher pay rates. To prevent such situations, two methods are provided for neutralizing the effects of skill-mix changes on average pay rates for nonunion groups. The first allows pay-rate increases to be computed as a weighted average of the separate increases for distinct employee subgroups within an employee unit. This is similar to the procedure used in determining the pay-rate increase over the life of a new collective bargaining agreement. The second method allows the computation of pay-rate changes for the group of continuing individuals employed throughout the program year. Using this latter method, pay-rate increases for legitimate, individual promotions and changes in individual job qualifications may be excluded. Under this option, a company that gives company-wide raises (including benefits) of 7 percent and

continues its normal promotional practices will be in compliance with the standard regardless of changes in the employee skill mix during the program year. This approach should be especially useful to small firms that do not typically perform extensive cost-control budgeting analyses.

5. Variable Compensation

Application of the pay standard to nonunion employee groups is complicated by the existence of widely varying, and often complicated, incentive pay plans. Typically, the actual payments received by employees under these plans are not controlled by the firm once these plans are in place. In fact, the primary rationale for these plans is that pay should be high when individual or company performance is good and low when it is not. The primary examples are commission programs, piece-work pay, annual bonus plans, and long-term incentive plans.

Two principles guide the treatment of these programs under the pay standard: (1) all such forms of compensation should be counted as pay and (2) such compensation should be counted as pay when earned rather than when paid (except for discretionary bonuses). Commission and piece-work pay increases in excess of 7 percent under these plans will not put a company out of compliance if it can be shown that the extra pay is attributable to increases in physical volume rather than to rising prices or a change in the pay formula. As noted above, *discretionary* bonuses are counted as pay when received. *Nondiscretionary* bonuses (i.e., bonuses dictated by a fixed formula or rule) are counted as pay when earned. In dealing with incentive pay that is tied to profit, companies should make a projection of the growth in profit and grant salary increases that are consistent with the profit projection and the pay standard. Pay increases that exceed 7 percent because profits rise by more than was reasonably expected will not result in determinations of noncompliance.

"Future-value incentive programs," such as stock option plans (providing the option to purchase stocks at some future date at a currently stipulated price) are treated separately. Under this type of plan, compensation received by exercising a purchase option during the program year will be the result of grants or commitments made before the announcement of the anti-inflation program, and is not charged against the pay standard. Similarly, the compensation value of grants made during the coming year will not be known until several years in the future. In these cases, the 7-percent limitation is applied to the *number of units granted* (per eligible employee) in the coming year compared to the number of units granted (per eligible employee) in the base year. (If eligibility rules are changed, the limitation is applied to the number of units granted per employee in the relevant employee unit.)

6. Exemptions and Exceptions

In the interest of equity and economic efficiency, a number of exceptions and exclusions have been included in the pay standard.

A. Low-wage workers.—Because the poor are least able to bear the burden of fighting inflation, an explicit exemption for low-wage workers is provided. This exemption is effected by requiring that, in the calculation of pay-rate changes, employees earning no more than $4.00 per hour in straight-time wages at the beginning of the program year be excluded from all employee groups. As a result of this exclusion, if pay rates for these low-wage workers increase by more than 7 percent—for example, due to the revision in the minimum wage and the so-called "ripple effect" to avoid compression of the wage structure near the minimum wage—this does not count against the allowable increases for other employees. Also, if pay rates for low-wage workers increase by less than 7 percent, these lesser increases cannot be used to offset greater increases for other workers.

B. Tandem relationships.—An exception to the pay standard is provided for reasons of equity to allow for the continuation of established tandem relationships among employee groups. For example, in some bargaining situations, one or more units traditionally adopt the settlement of a leader unit. Also, some companies have traditionally maintained a fixed differential (or even equality) between the wages of their union and nonunion employees in the same plant or in different plants. Where such tandem relationships exist, it is possible for the follower employee unit to receive a pay-rate increase of more than 7 percent to keep in step with a complying leader unit without being out of compliance. The exception applies, for example, if the leader (collective bargaining) unit signed a contract before the beginning of the program year and the follower unit signs the same contract during the program year. The tandem exception can also be invoked if a leader collective bargaining unit signs a complying contract during the program year that provides for an 8-percent increase in the first year and a follower, nonunion unit is given the same percentage increase.

It should be emphasized that this exception can be invoked only in those situations in which the leader/follower relationship is clear, in terms of both the amount and the timing of pay-rate increases. For example, industry-wide pattern bargaining, in which a settlement with one company—but not always the same company—sets a pattern that is adopted by other companies does not qualify as a tandem relationship because the leader/follower relationship is not fixed over time. Compliance determinations in such situations can, however, be made for the industry as a whole, using the industry-wide base pay rate.

C. Productivity-enhancing work-rule changes.—To promote economic efficiency, pay-rate increases that are traded for work-rule changes that result in demonstrable improvements in productivity are not counted against the 7-percent standard. This exception applies only to collective bargaining situations in which a company has no alternative means of eliminating past contractual work-rule restrictions other than to buy them out through an additional wage-rate increase. The exception does not apply to wage-rate adjustments for improvements in productivity that are not tied to contractual work-rule changes.

D. Acute labor shortages.—Although the pay standard allows for a substantial amount of flexibility in setting pay rates for particular types of workers, this flexibility may be inadequate to retain or attract workers in occupations that are in severely short supply. An explicit exception is therefor provided for cases of acute labor shortages. To invoke this exception, the acute labor shortage must be documented by evidence on the number of vacancies, the time required to fill vacancies, and movements in entry-level pay rates.

E. Undue hardship and gross inequity.—The pay standard, including the above exceptions and exemptions, has been designed to prevent complying workers and businesses from suffering extreme hardship or inequities. Nevertheless, not all situations causing hardship or inequity can be anticipated. For this reason, the standard allows for a general exception for undue hardship and gross inequities. It must be emphasized, however, that to qualify for this exception, a situation must be manifestly unfair. In particular, perceived notions of the need to "catch up" with other groups of workers (even with traditional "comparability groups") do not, in and of themselves, constitute grounds for an exception.

Appendix B. Numerical Example to Illustrate Possible Changes in the Petroleum-Refined Standard

Under the current mix adjustment, the *base-period* gross margin is calculated using program-period quantities. Using the alternative mix adjustment, one would calculate the *program-period* gross margin using base-period quantities. The following example illustrates the difference between the two procedures for changes in product and input mixes that might occur as the result of investments in upgraded refinery processing facilities. On the product side, the mix shifts away from residual oil toward lighter products; on the input side, the mix shifts away from light crude toward heavy crude. The base-year and program-year prices in the example correspond closely to actual average prices during these periods. In the example, the adjustment—and hence the allowable growth in gross margin after the adjustment is made—is much larger using the alternative method. This difference reflects primarily the rapid growth in the price differentials between the base year and the program year.

Tables B–I and B–II show the calculations for the alternative method, while Tables B–III and B–IV refer to the current method. In the former case, the base-year gross margin is $3.50 per barrel, the actual program-year gross margin in $5.77 per barrel, and the constructed program-year gross margin is $3.87 per barrel; hence, the adjustment permits refiners to earn an additional $1.90 per barrel. By comparison, under the current procedure the constructed base-period gross margin is $4.23 per barrel while the actual gross margins in the base period and program year remain the same; hence, the adjustment permits refiners to earn and additional $.63 per barrel, the difference between the constructed and actual base-period gross margins multiplied by 1.135 (the permitted growth in the gross margin over the first two program years).

Table B-I.—*Input-Output Mix Adjustment Example Alternative Method*

Product sales mix	Base year			Program year			Constructed program year		
	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Gasoline:									
Regular leaded	$17.50	1,700	$29,750	$32.00	1,500	$48,000	$32.00	1,700	$54,400
Unleaded	19.30	900	17,370	33.60	1,300	43,680	33.60	900	30,240
Premium leaded	20.00	500	10,000	34.40	400	13,760	34.40	500	17,200
Distillates	16.00	2,000	32,000	29.00	2,500	72,500	29.00	2,000	58,000
Residual	12.00	1,130	13,560	22.00	800	17,600	22.00	1,130	24,860
Other	20.00	500	10,000	35.00	600	21,000	35.00	500	17,500
Output-mix subtotal	16.74	6,730	112,680	30.50	7,100	216,540	30.04	6,730	202,200

Hydrocarbon cost mix	Base year			Program year			Constructed program year		
	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Crude petroleum:									
Light	$12.50	5,000	$62,500	$25.00	3,500	$87,500	$25.00	5,000	$125,000
Heavy	11.00	1,000	11,000	20.00	3,000	60,000	20.00	1,000	20,000
Refined products	15.00	1,000	15,000	30.00	900	27,000	30.00	1,000	30,000
Other hydrocarbons	12.00	50	600	22.00	50	1,100	22.00	50	1,100
Total		7,050	89,100		7,450	175,600		7,050	176,100
Input mix subtotal	13.24	[1]6,730	89,100	24.73	[1]7,100	175,600	26.17	[1]6,730	176,100
Gross margin per sales barrel									
Actual	3.50			5.77			3.87		
Allowable							[2]3.97		

[1] Sales barrels used in computing unit cost.
[2] Equals the actual base-year unit gross margin multiplied by 1.135.

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TABLE B-II

Value of Mix Adjustment - Alternative Method

Product Mix

Actual program-period unit revenues

$$= \sum_j p_j(t)\, q_j(t) \,/\, \sum_j q_j(t)$$

$$= \$30.50.$$

Constructed program-period unit revenues

$$= \sum_j p_j(t)\, q_j(o) \,/\, \sum_j q_j(o)$$

$$= \$30.04.$$

Value of product-mix adjustment = (actual unit revenues - constructed unit revenues) x sales volume

= ($30.50 - $30.04) x 7,100,000 = $3,266,000.

Input Mix

Actual program-period unit cost

$$= \sum_i c_i(t)\, v_i(t) \,/\, \sum_j q_j(t)$$

$$= \$24.73.$$

Constructed program-period unit cost

$$= \sum_i c_i(t)\, v_i(o) \,/\, \sum_j q_j(o)$$

$$= \$26.17.$$

Value of input-mix adjustment = (actual unit cost - constructed unit cost) x sales volume

= ($24.73 - $26.17) x 7,100,000 = -$10,224,000.

Effect on Gross Margin (Additional Allowable Gross Margin)

Effect on gross margin = value of product-mix adjustment - value of input-mix adjustment

= $3,266,000 + $10,224,000 = $13,490,000.

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Table B-III.—*Input-Output Mix Adjustment Example Current Method*

Product sales mix	Base year			Program year			Constructed base year		
	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Gasoline:									
Regular leaded	$17.50	1,700	$29,750	$32.00	1,500	$48,000	$17.50	1,500	$26,250
Unleaded	19.00	920	17,370	33.00	1,300	43,030	19.00	1,300	25,090
Premium leaded	20.00	550	10,000	24.40	430	13,760	20.00	400	8,000
Distillates	16.00	2,000	32,000	29.00	2,500	72,500	16.00	2,500	40,000
Residual	12.00	1,100	13,500	22.00	800	17,600	12.00	800	9,600
Other	20.00	500	10,000	39.00	600	21,000	20.00	600	12,000
Output Mix Subtotal	18.74	6,700	112,000	30.00	7,100	216,540	17.03	7,100	120,940

Hydrocarbon cost mix	Base year			Program year			Constructed base year		
	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K barrels)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K barrels)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Crude petroleum:									
Light	$12.50	5,000	$62,500	$25.00	3,500	$87,500	$12.50	3,500	$43,750
Heavy	11.00	1,000	11,000	22.00	2,000	60,000	11.00	3,000	33,000
Refined products	15.00	1,000	15,000	30.00	900	27,000	15.00	900	13,500
Other hydrocarbons	12.00	50	600	22.00	50	1,100	12.00	50	600
Total		7,050	89,100		7,450	175,600		7,450	90,850
Input mix subtotal	13.24	[1] 6,700	89,100	24.73	[1] 7,100	175,600	12.83	[1] 7,100	90,850
Gross margin									
Actual gross margin	3.50			5.27			4.23		
Allowable gross margin				[2] 4.00					

[1] Sales barrels used in computing unit cost.
[2] Equals the constructed base-year unit gross margin multiplied by 1.135

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TABLE B-IV

Value of Mix Adjustment - Current Method

Product Mix

Actual base-period unit revenues

$$= \sum_j p_j(o)\, q_j(o) \,/\, \sum_j q_j(o)$$

$$= \$16.74.$$

Constructed base-period unit revenues

$$= \sum_j p_j(o)\, q_j(t) \,/\, \sum_j q_j(t)$$

$$= \$17.03.$$

Value of product-mix adjustments = (constructed unit revenues - actual unit revenues) x 1.135 x sales volume

= $17.03 - $16.74) x 1.135 x 7,100,000 = $2,336,965.

(note: program-period sales volume used in measuring program-period period value of mix adjustment on unit revenues)

Input Mix

Actual base-period unit cost

$$= \sum_i c_i(o)\, v_i(o) \,/\, \sum_j q_j(o)$$

$$= \$13.24.$$

Constructed base-period unit cost

$$= \sum_i c_i(o)\, v_i(t) \,/\, \sum_j q_j(t)$$

$$= \$12.80.$$

Value of input-mix adjustment = (constructed unit cost - actual unit cost) x 1.135 x 7,100,000

= ($12.80 - $13.24) x 1.135 x 7,100,000 = -$3,545,740.

(note: program-period sales volume used in computing program-period value of mix adjustment on unit cost)

Effect on Gross Margin (Additional Allowable Gross Margin)

Effect on gross margin = value of product-mix adjustment - value of input-mix adjustment

= $2,336,965 + $3,545,740 = $5,882,705.

[FR Doc. 80-20544 Filed 0-00-80; 8:45 am]
BILLING CODE 3175-01-C

Friday
July 11, 1980

Part VI

Department of the Interior

National Park Service

Right-of-Way Regulations

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 14

Right-of-Way Regulations

AGENCY: National Park Service.

ACTION: Interim rule and request for comments.

SUMMARY: This rule serves as a notification to the public and a request for their comments on interim right-of-way regulations for areas of the National Park System. Until now, the National Park Service right-of-way regulations were incorporated in the regulations promulgated by the Bureau of Land Management and codified in 43 CFR Part 2800. However, these rules have been totally revised deleting all reference to the National Park Service. Accordingly, the Service must develop independent regulations applicable to right-of-way requests. These regulations will provide a process for the review, consideration and approval or disapproval of requests for rights-of-way across all areas of the National Park System.

DATES: Effective date: July 11, 1980. Comments due: August 11, 1980.

ADDRESS: Comments should be directed to: Division of Ranger Activities and Protection, National Park Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service, Telephone: (202) 343-5607 or 4874.

SUPPLEMENTARY INFORMATION:

Background

This Federal Register publication is an interim rule and request for comments on right-of-way regulations for areas of the National Park System. Currently, the National Park Service is included in the right-of-way regulations promulgated by the Bureau of Land Management and codified in 43 CFR Part 2800. However, BLM has published revised final rules concerning rights-of-way (45 FR 44518) under the authority of the Federal Land Policy and Management Act (43 U.S.C. 1761 *et seq.*, 90 Stat. 2743). These regulations, which are effective July 31, 1980, no longer include the National Park Service. Accordingly, the Service will be promulgating new right-of-way regulations.

At the same time, notification is given that during the interim period until the new regulations are published as final rules, the National Park Service will retain the current regulations which are applicable to it. Except for renumbering and editorial revisions to make the regulations applicable only to the National Park Service, those provisions currently found in 43 CFR Part 2800 which apply to areas under the management or control of the National Park Service will be transferred, without substantive revision, to Part 14 of Title 36 of the Code.

Since this is not a new rulemaking, but merely a transfer of the current regulations to a new Title in the Code, these regulations are effective immediately, and will remain in effect until replaced or revised through the rulemaking process, notification of which is also provided herein.

Key Issues

The National Park Service is proposing to promulgate revised right-of-way regulations which will provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System.

These regulations will establish procedures for the granting of rights-of-way authorized at the discretion of the Secretary of the Interior, for rights-of-way authorized by individual park legislation, and for rights-of-way issued because of a right held. These regulations must ensure compliance with the right-of-way authorities found in 16 U.S.C. §§ 5, 79 and 23 U.S.C. § 317. They will also have to reflect the additional factor that Congress has now specifically stated that activities inconsistent with national park values and purposes shall not be authorized in areas of the National Park System "except as may have been or shall be directly and specifically provided by Congress." *See* section 101(b) of the Act of March 27, 1978 (16 U.S.C. § 1a-1, 92 Stat. 166).

These regulations may be drafted narrowly just to ensure compliance with the right-of-way authorities mentioned above. Or, they may be written more broadly to cover such issues as: access by necessity, private reserved access, right-of-way authorizations in individual statutes, and regulating inholdings and utility easements through right-of-way regulations. The National Park Service is proposing that these regulations, whether drafted narrowly or broadly, address both the direct and indirect effects of granting rights-of-way across units of the National Park System.

The National Park Service is seeking early public involvement in the preparation of these regulations. Accordingly, interested persons may submit written comments, suggestions or objections on this subject to the address noted above.

Impact Analysis

The National Park Service has determined that the regulations it is proposing to promulgate are significant in accordance with Part 14 of Title 43 of the Code of Federal Regulations. This determination of significance is based on the fact that these regulations may have regionwide or local impacts on State and local governments, and on other programs of the Department or other Federal agencies.

A determination on the need for a regulatory analysis has not been made. Public comment is invited on whether the potential economic consequences of the rule require this analysis. The Department of the Interior has determined that a regulatory analysis is required for rules which are likely to have a substantial economic effect on the entire economy or on an individual, region, industry or level of government. The criteria for this analysis are as follows: (1) the rule will have an annual economic effect of $100 million or more; or (2) even though the economic effect of the rule will be less than $100 million, the potential economic effect of the rule on the economy or an individual region, industry or level of government is sufficiently major as to require formal analysis to assure that the objectives of the rule are achieved with minimum burden.

Ira J. Hutchison,

Acting Director, National Park Service.

In consideration of the foregoing, Chapter I, Title 36 of the Code of Federal Regulations, is hereby amended by the addition of a new Part 14 as follows:

PART 14—RIGHTS-OF-WAY

Principles and Procedures

Subpart A—Rights-of-Way: General

Sec.

Subpart B—Nature of Interest

Sec.

Subpart C—Procedures

Sec.

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

Subpart A—Rights-of-Way: General

§ 14.1 Applicability.

The regulations contained in this part shall apply to all Federally owned or controlled lands administered by the National Park Service.

§ 14.2 Definitions.

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, National Park Service.

(c) "Regional Director" means the person in charge of a region of the National Park Service.

(d) "Authorized Officer" means the Superintendent.

(e) "Superintendent" means the person in charge of an area of the National Park System or his or her duly authorized representative.

(f) "Project" means the physical structures in connection with which the right-of-way is approved.

(g) "Construction work" means any and all work, whether of a permanent nature, done in the construction of the project.

(h) "Park" means any federally owned or controlled land within an area of the National Park System.

(i) "Right-of-Way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

Subpart B—Nature of Interest

§ 14.5 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

§ 14.6 In form of easement, license, or permit.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

§ 14.7 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

§ 14.8 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 14.9 Terms and conditions.

An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent may specify.

(c) To take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as the superintendent may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a state or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the United States as provided above to the extent that it may legally do so.

(g) To notify promptly the superintendent of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the National Park Service to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent.

(j) That he shall at all times keep the authorized officer informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 14.10 Areas of National Park System.

(a) The act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without the specific authority of Congress.

(b) Pursuant to any statute, including those listed in this subpart, applicable to lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

Subpart C—Procedures

§ 14.20 Application.

§ 14.21 Form.

Application. The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purposes for which the right-of-way is to be used. Applications shall be filed with the superintendent. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 14.22 Reimbursement of costs.

(a)(1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321–4347), before the right-of-way or permit will be issued under the regulations of this part.

(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public; (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies.

(3) An applicant must submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way for crossing National Park System lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length:	*Payments*
Less than 5 miles.....	$50 per mile or fraction thereof.
5 to 20 miles.....	$500.
20 miles and over.....	$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in subdivision (i) of this subparagraph (e.g., for communication sites, reservoir sites, plant sites, and other non-linear facilities)—$250 for each 40 acres or fraction thereof.

(iii) If a project has the features of paragraphs (a)(3) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (a)(3) (i) and (ii) of this section.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the paragraph (a)(3) of this section, payment by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of any authorization for a right-of-way or permit incident to a right-of-way, the applicant will be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a) (3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a) (3) and (4) of this section shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(7) An applicant who withdraws its application before a decision is reached on it is responsible for costs incurred by the United States in processing such application up to the date upon which the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the applicaiton review process. Reimbursement of such costs shall be due within thirty days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section exceeds actual costs to the United States, a refund may be made by the authorized officer from applicable funds, under authority of 43 U.S.C. 1374, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States within the prior written approval of the authorized officer.

(9) The authorized officer shall on request give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When two or more applications for rights-of-way are filed which the authorized officer determines to be in competition with each other, each shall reimburse the United States according to paragraphs (a) (3) through (7) of this section except that costs which are not readily identifiable with one of the applications, such as costs for an environmental impact statement on all the proposals, shall be paid by each of the applicants in equal shares.

(11) The authorized officer may require an applicant to furnish security, in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit, or other means acceptable to the authorized officer, for costs under § 14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(12) When an applicant for a right-of-way is a partnership, corporation, association, or other entity, and is owned or controlled, directly or indirectly, by one or more other entities, one or more of the owning or controlling entity or entities shall furnish security in an amount acceptable to the authorized officer, by bond, guaranty, cash, certificate of deposit or other means acceptable to the authorized officer, for costs under § 14.22. The authorized officer may at any time, and from time to time, require such additional security or substitution of security as the authorized officer deems appropriate.

(13) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way, each such applicant shall be jointly and severally liable for costs under § 14.22.

(14) When two or more noncompeting applications for rights-of-way are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 14.22 for the entire system; subject, however, to the provisions of paragraphs (a) (11) through (13) of this section.

(15) The regulations contained in § 14.22 are applicable to all applications for rights-of-way or permits incident for rights-of-way over the public lands pending on June 1, 1976.

(b)(1) After issuance of a right-of-way or permit incident to a right-of-way, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way or permit incident to a right-of-way must submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way or permit incident to a right-of-way, for crossing National Park System lands (e.g., for powerlines, pipelines, roads, and other linear facilities).

Length:	Payment
Less than 5 miles	$20 per mile or fraction thereof.
5 to 20 miles	$200.
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way or permit incident to a right-of-way, not included in paragraph (b)(2)(i) of this section (e.g., for communication sites, reservoir sites, plant sites, and other nonlinear facilities)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of paragraphs (b)(2) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (b)(2) (i) and (ii) of this section.

(3) When a right-of-way or permit incident to a right-of-way is issued, the authorized officer shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the paragraph (b)(2) payment by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way or permit incident to a right-of-way, the former holder will be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

§ 14.23 Showing as to organizations required of corporations.

(a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the National Park Service the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 14.24 Showing as to citizenship required.

(a) *Individuals.* An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 *et seq.*), and the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) *Association of Individuals.* An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 14.25 Documents which must accompany application.

(a) *Maps.* Each application, other than an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having an nominal voltage of less than 33 kV. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the land to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdividions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. The total distance of the right-of-way on the Federal lands shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix A) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(8) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

§ 14.26 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and

the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in Subpart D.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way, or easement. After default has occurred, structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 14.27 Application and use procedure.

§ 14.28 Incomplete application and reports.

Where an application is incomplete or not in conformity with the law or regulations the authorized officer may, in his discretion, (1) notify the applicant of the deficiencies and provide the applicant with an opportunity to correct the deficiencies; or (2) the authorized officer may reject the application.

§ 14.29 Timely construction.

(a) Unless otherwise provided by law, a period of up to five years from the date a right-of-way is granted is allowed for completion of construction. Within 90 days after completion of construction or after all restoration stipulations have been complied with, whichever is later, proof of construction, on forms approved by the Director, shall be submitted to the authorized officer.

(b) The time for filing proof of construction may be extended by the authorized officer, unless prohibited by law, upon a satisfactory showing of the need therefor and the filing of a progress report, demonstrating that due diligence toward completion of the project is being exercised, for reasonable lengths of time not to exceed a total of ten years from the date of issuance of the right-of-way.

§ 14.30 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 14.31 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the authorized officer. The authorized officer may require the filing of an amended application in accordance with § 14.20 wherein the authorized officer's judgment the deviation is substantial.

§ 14.32 Revocation or cancellation.

§ 14.33 Order of cancellation.

All rights-of-way approved pursuant to this part, shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be cancelled except on the issuance of a specific order of cancellation.

§ 14.34 Change in jurisdiction over lands.

A change in jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will however, change the administrative jurisdiction over the right-of-way.

§ 14.35 Transfer of right-of-way.

§ 14.36 Method of filing.

Any proposed transfer in whole or in part of any right, title or interest in a right-of-way, or permit incident to a right-of-way acquired under any law, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in accordance with § 14.20 for approval, must be accompanied by the same showing of qualifications of the transferee as is required of the applicant, and must be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way. No transfer will be recognized unless and until it is first approved in writing by the authorized officer.

§ 14.37 Reimbursement of costs.

All filings for transfer approval made pursuant to this section, except as to rights-of-way or permits incident to rights-of-way excepted by § 14.22(a)(4), must be accompanied by a nonrefundable payment of $25.

§ 14.38 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all monies due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System)

§ 14.50 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, Secretary of Transportation may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Transportation in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Transportation determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction

or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Transportation shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department or its nominee, for such purposes and subject to the conditions so specified.

§ 14.51 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

§ 14.52 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Transportation and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

§ 14.53 Application.

§ 14.54 General.

Applications for rights-of-way and material sites under title 23, U.S.C., for lands under the jurisdiction of the National Park Service, together with four copies of a durable and legible map shall be filed by the appropriate State highway department with the Director, National Park Service, Department of Interior, Washington, D.C. 20240. Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the requirements of § 14.25(a).

§ 14.55 Consultation with local bureau officials, program values.

An applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the National Park Service to ascertain whether or not the use or appropriation of the lands for right-of-way purposes is consistent with the Service's management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

§ 14.56 Concurrence by Federal Highway Administration.

The appropriate State highway department will forward a copy of each application and map filed with the National Park Service to the authorized officer of the Federal Highway Administration for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

§ 14.57 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, U.S.C., the authorized officer of the National Park Service will notify the applicant and the authorized officer of the Federal Highway Administration either (a) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (b) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

§ 14.58 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, U.S.C., by the authorized officer of the National Park Service will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (a) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, U.S.C., and (b) any conditions which he deems necessary. Grants of highway right-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the National Park Service deems appropriate.

§ 14.59 Additional rights-of-way within highway rights-of-way.

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway rights-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the authorized officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

§ 14.60 General.

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation, or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may

appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 14.9, in connection with the construction and maintenance of such facilities.

§ 14.61 Terms of grant.

Except as modified by § 14.60 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23 U.S.C., and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

Subpart E—Power Transmission Lines, General

§ 14.70 Statutory authority.

(a) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

§ 14.71 Lands subject to grant.

Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

Subpart F—Principals and Procedures Power Transmission Lines

§ 14.75 Nature of interest.

§ 14.76 Terms and conditions.

(a) By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 14.9.

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine the relationship of the proposed facility to the power marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interferenoe.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more must, in addition to the requirements of Subpart C, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy and surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(A) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(B) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(C) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(D) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(E) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(F) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(G) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(H) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy the payment to be an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(I) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(J) if the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(K) As used in this section, the term "transmission facility" includes (*1*) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (*2*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(L) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(b) Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner cancelled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 14.20, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

§ 14.77 Procedures.

§ 14.78 Applications.

(a) *Applications filed.* Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through National Park Service areas must be filed and approved before any rights can be claimed thereunder.

(b) *Required showings.* (1) A description of the plant or connecting generating plants which generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(2) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a

statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(3) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(4) If the line is to have a nominal voltage of 66 kilovolts or more, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(5) Any application under the act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(6)(i) A detailed description of the environmental impact of the project shall be included with the application. It shall provide, among other things, information about the impact of the project on airspace, air and water quality, scenic and esthetic features, historical and archeological features, and wildlife, fish, and marine life.

(ii) The proposed site, design, and construction of the project shall be consistent with the "Environmental Criteria for Electric Transmission Lines," prescribed jointly by the Secretary of Agriculture, as well as such other environmental criteria and guidelines as the National Park Service shall from time to time prescribe. "Environmental Criteria for Electric Transmission Systems" is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(iii) If all other requirements are met, the application may be approved if it is determined that the beneficial purposes and effects of the project will not be outweighed by an adverse environmental impact. If the authorized officer determines that the application cannot be approved as proposed, he will, whenever possible, suggest alternative routes or methods of construction, or other modifications which if adopted by the applicant would make the application acceptable.

Subpart G—Radio and Television Sites

§ 14.90 Authority.

The act of March 4, 1911, (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

§ 14.91 Procedures.

(a) Any application under the act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(b) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of March 4, 1911. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

Subpart H—Telephone and Telegraph Lines

§ 14.95 Authority.

(a) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipelines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed 400 feet by 400 feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

§ 14.96 Procedures.

Any application under the act of March 4, 1911, for line right-of-way in excess of 100 feet in width or for a

structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

Appendix A

Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act involved, and to the nature of the project.

Form

References should be made to the appropriate section of the regulations to determine when each of the forms is required.

Form No. 2 may be signed by any officer or employee of the company who is authorized to sign it. However, if it is executed by a person other than the President, it must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Forms 1 and 2 to be placed on maps. See § 14.25[a][7].

Engineer's Statement

(Form 1)

————(Name of engineer) states he is by occupation a ————(Type of engineer) employed by the ————(Company) to make the survey of the ————(Kind of works) as described and shown on this map; that the survey of said works made by him (or under his supervision) and under authority, commencing on the ——— day of ———, 19—— and ending on the ——— day of ———, 19——; and that such survey is accurately represented upon this map.

———————

Engineer

Applicant's Certificate

(Form 2)

This is to certify that ———— (Engineer), who subscribed the statement hereon, is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown, and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of ————(Cite statute); and I further certify that the right-of-way herein described is desired for (state purpose)————————

(Seal)

———————

Signature of Applicant

———————

Title

———————

Company

Attest:

[FR Doc. 80-23646 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-70-M

Federal Register

Friday
July 11, 1980

Part VII

Department of the Interior

Bureau of Land Management

Grazing Administration and Trespass on Public Lands

DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2469]

Grazing Administration and Trespass on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the regulations on grazing administration and trespass to conform to the provisions of the Public Rangelands Improvement Act of 1978 that amend and supplement the requirements of the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: August 11, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (220), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: R. Keith Miller, (202) 343-5841.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is David Little of the Division of Rangeland Management, Bureau of Land Management, assisted by the Office of Legislation and Regulatory Management.

Proposed rulemaking was published on pages 44702-44704 in the Federal Register of July 30, 1979, and invited comments for 60 days ending September 28, 1979. Comments were received from 33 sources including individuals, businesses, State governments and environmentalists. These comments have been reviewed and analyzed. The following discussion summarizes the comments, suggestions and actions taken.

General Comments

Several comments requested that the amendments to the grazing administration regulations include a provision to implement the Experimental Stewardship Program authorized by section 12 of the Public Rangelands Improvement Act of 1978. The Experimental Stewardship Program is now being implemented by the Bureau of Land Management. The intent of the program is to test the offering of incentives to holders of grazing permits or leases whose efforts result in improved range conditions. The incentives to be tested will be specific to an individual experiment or area and will not have broad application to the public lands as a whole until the results of the tests are evaluated. The current regulations are sufficiently broad to provide the regulatory framework for the program. However, if an incentive to be tested is not covered by current regulations, a special rule may be issued under 43 CFR 4120.8 to authorize the test to the extent permissable by law.

Several comments suggests changes to §§ 4100.0-2, Objectives, and 4100.0-5, Definitions. Since these sections of the regulations were not included in the proposed rulemaking, they have not been included in the final rulemaking. However, because the suggestions do appear useful in clarifying the intent of the regulation, they will be considered when future changes are proposed.

Several suggestions were made that a body or a third party be appointed to arbitrate disputes between the Bureau of Land Management and grazing permittees or lessees. Permittees and lesses are free to consult with range experts or other parties at any time and the Bureau will consider relevant information from any available source. However, the Bureau cannot delegate its authorities for management of the public lands to such individuals and no such change has been made in the regulations.

Authorities

The proposed rulemaking had included in § 4100.0-3(b) a reference to the Federal Land Policy and Management Act of 1976 as amended by the Public Rangelands Improvement Act of 1978. A comment suggested that the policy of the Public Rangelands Improvement Act of 1978 for improving the public rangelands be included in this rulemaking. This will be considered for future proposed rulemaking.

One comment suggested that the phrase "land use plan" at the end of § 4100.0-3(b) should instead be titled "allotment management plan." No change was made because the reference to the land use plan is required by section 302(a) of the Federal Land Policy and Management Act of 1976. The land use plan provides the multiple use management objectives for an area while the allotment management plan is a site-specific plan for managing grazing by livestock.

Decrease in Forage

Several comments expressed concern that the changes in § 4110.3-2 refer only to decreases and do not mention increases in forage. Increases in forage are included in the existing regulations in 43 CFR 4110.3-1 and there has been no change.

Most comments supported the concept of suspended preference and one suggestion was made to clarify the intent of § 4110.3-2(b) by specifically providing for a suspension of the grazing preference. This has been done.

Allotment Management Plans

A change was made in the introductory paragraph of § 4120.2-3 in response to a comment that it was not clear whether an allotment management plan (AMP) must be developed within the framework of an overall land use plan or whether it can be the sole management tool for a specific area. The change requires that the AMP's be developed within the framework of the land use plan provided for in § 4110.2-2(a).

Several comments interpreted the wording in § 4120.2-3(a) to mean that the authorized officer is mandated to approve any AMP prepared. The wording has been changed to indicate that approval of AMP's by the authorized officer is discretionary.

A suggestion was made that the objectives of the permittee or lessee be included in the AMP. No change has been made since the present wording is broad enough to permit all types of relevant management objectives.

Grazing Permits or Leases

No comments were submitted on § 4130.2.

Exchange-of-use Grazing Agreements

Several comments on § 4130.4-1 expressed support for the change which would permit exchange-of-use grazing agreements to include lands outside of the allotment to be used if this would meet specific objectives in land use plans or AMP's. However, there was concern for areas which may not yet have these plans completed. A change is included in the final rulemaking that provides for continuing or renewing existing exchange-of-use grazing agreements involving lands outside an allotment for which no land use plan or allotment management plan has been completed.

A change was also made so that where the lands offered in exchange-of-use are leased, the expiration date of the exchange-of-use grazing agreement may be, but is not required to be, the same as the expiration of the lease. This will lessen the burden on both the applicant and the Bureau of Land Management where lands may be leased for a relatively short period of time but there is a history of almost automatic renewal.

Section 4130.4-1 has been divided into five paragraphs to make it easier to read and understand.

Other

Certain sections and paragraphs have not been carried forward from the proposed rulemaking to this final rulemaking because of need for further review and analysis. They are as follows:

1. Paragraph (c) of § 4110.3–2 Decrease in forage.

2. Paragraphs (b), (c), (d) and (e) of § 4120.2–1 Mandatory terms and conditions.

3. Section 4120.3 Emergency adjustments in livestock use and closure to livestock use.

4. Paragraphs (c) and (d) of § 4160.3 Final decisions.

The time and effort of those who commented on the above items is appreciated and their suggestions will be given due consideration in the preparation of these regulations for publication again as proposed rulemaking.

Editorial and clarification changes have been made as necessary.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)–315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1701 et seq.).

Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Acting Assistant Secretary of the Interior.

July 8, 1980.

1. Section 4100.0–3 (b) is revised to read as follows:

§ 4100.0–3 Authority.

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.), provides for the management, protection, development, and enhancement of the public lands and directs the Secretary to manage these lands under principles of multiple use and sustained yield in accordance with land use plans.

* * * * *

2. Section 4110.3–2 (b) is revised to read as follows:

§ 4110.3–2 Decrease in forage.

* * * * *

(b) When authorized grazing use exceeds the amount of forage available and allocated for livestock grazing within an allotment or where reduced grazing use is necessary to facilitate achieving the objectives in the land use plans, the grazing authorized under grazing permits or leases shall be reduced to the livestock grazing capacity. The difference between the authorized grazing use and the grazing preference shall be held in suspension.

* * * * *

3. § 4120.2–3 is amended by revising the introductory paragraph and paragraphs (a)(c), and (f) to read as follows:

§ 4120.2–3 Allotment management plans.

Grazing management may be applied on allotments through the preparation and implementation of allotment management plans which are developed within the framework of the land use plan provided for in § 4110.2–2(a) of this title.

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with the affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan, and when approved by the authorized officer shall be implemented (see § 4100.0–5(c) of this title). The allotment management plan shall include terms and conditions under 4120.2–1 of this title, may include terms and conditions under § 4120.2–2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust his/her operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

* * * * *

(c) Allotment management plans may be revised or terminated by the authorized officer after review and careful and considered consultation, cooperation, and coordination with the parties involved.

* * * * *

(f) Decisions which specify that the terms and conditions of allotment management plans are incorporated into grazing permits or leases may be protested and appealed under Subpart 4160 of this title.

4. Section 4130.2(d)(2)(iv) is revised to read as follows:

§ 4130.2 Grazing permits or leases.

* * * * *

(d) * * *

(2) * * *

(iv) Availability of completed land use plans, except that the absence of a completed land use plan shall not be the sole basis for issuing a grazing permit or lease for a term of less than 10 years unless the authorized officer determines on a case-by-case basis that the information to be contained in such land use plan is necessary to determine whether a shorter term should be established;

* * * * *

4a. Section 4130.4–1 is revised to read:

§ 4130.4–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to any applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement would be in harmony with the management objectives for the allotment. (b) The lands offered for exchange-of-use shall be within the exterior boundaries of the allotment to be used, except that lands outside such boundaries may be included where it would otherwise meet specific objectives identified in a land use plan or allotment management plan. Existing exchange-of-use grazing agreements involving lands outside the allotment to be used may be continued or renewed where a land use plan or allotment management plan has not been completed. (c) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock grazing capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use. (d) The exchange-of-use grazing agreement may be issued for a term of not more than 10 years. The expiration date of the exchange-of-use agreement may coincide with the expiration date of any grazing permit or lease issued on the allotment in which the lands offered in exchange-of-use is located. If the lands offered in the exchange-of-use agreement are leased the expiration date of the exchange-of-use grazing agreement coincide with the expiration date of this lease not to exceed 10 years. (e) During the term of the exchange-of-use grazing agreement, the Bureau of Land Management shall have management control for grazing purposes of such nonfederally owned or controlled lands under the provisions of this part and may authorize grazing use as deemed appropriate.

[FR Doc. 80-20640 Filed 7-10-80; 8:45 am]

BILLING CODE 4310-84-M

Friday
July 11, 1980

Part VIII

Department of Labor

Employment and Training Administration

Federal-State Unemployment Compensation Program; Interstate Arrangement for Combining Employment and Wages

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 616

Federal-State Unemployment Compensation Program; Interstate Arrangement for Combining Employment and Wages

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Interstate Arrangement for Combining Employment and Wages is a permanent part of the Federal-State Unemployment Compensation Program, which provides for paying unemployment compensation on the basis of combined employment and wages to those individuals whose base period employment was performed and wages were earned in two or more States. The Department of Labor is revising the combined-wage regulations to improve the procedures of paying States and transferring States for the handling of Combined-Wage Claims. There are no substantive changes in this document that affect the benefit rights of any individual.

EFFECTIVE DATE: August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Edwin Kerley, Group Chief, Division of State Program Management, Office of Program Management, Unemployment Insurance Service, U.S. Department of Labor, Room 7100, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213 (Phone (202) 376-7104).

SUPPLEMENTARY INFORMATION: Part 616, Chapter V, Title 20 of the Code of Federal Regulations sets forth the Interstate Arrangement for Combining Employment and Wages, which was approved under the Employment Security Amendments of 1970 (Public Law 91-373) as a required part of the Federal-State Unemployment Compensation Program. The requirements for State unemployment compensation laws are contained in section 3304(a) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a), and the requirement for a combined-wage arrangement is at section 3304(a)(9)(B) of the Code.

The proposal for amending Part 616 was published on February 5, 1980, at 45 FR 7974, with a 30-day comment period. No comments were received as of the close of business on March 6, 1980. Therefore, the amendments as proposed are published in final with minor technical and clarifying corrections.

Reasons for Amendments

Amendments to the Federal law in the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566) necessitated certain changes in Part 616 that were published in final on January 17, 1978, at 43 FR 2625. The Interstate Conference of Employment Security Agencies has recommended further changes to facilitate administration among the States of Combined-Wage Claims, and the billing of the United States for reimbursements of certain benefit costs. These further changes arise generally from three of the 1976 Amendments to the law.

1. Section 115 of the Unemployment Compensation Amendments of 1976 amended section 3304(a)(6) of the Internal Revenue Code of 1954, relating to requirements for denial of unemployment benefits to individuals who work in educational institutions for periods between school years and terms and during other nonwork periods. With respect to nonwork periods when the denial provisions are applicable it is necessary to redetermine the claimant's benefit rights, excluding school employment and wages, and if unemployment continues after the denial period ends it is necessary to reinstate the original determination of the claimant's benefit rights. An amendment to § 616.8(c), included in this document, requires that any State which transferred school wage credits to the paying State be notified of any redetermination of benefit rights which excludes school employment and wages, and of the resulting change in the charges of benefit costs to the transferring State. So that the excluded employment and wages will be available for use by the paying State in regard to any claims filed after the end of the denial period, a further amendment clarifies § 616.8(c) by providing that such transferred school wage credits shall be retained by the paying State and shall not be returned to the transferring State.

2. Section 212 of the Unemployment Compensation Amendments of 1976 amended the Federal-State Extended Unemployment Compensation Act of 1970, relating to Federal reimbursement of 50 percent of the costs of sharable regular and extended benefits, so as to exclude from reimbursement the costs of sharable regular and extended benefits paid on the basis of services in the employment of a State or local governmental entity for weeks of unemployment beginning on or after January 1, 1979. This exclusion requires the States to omit such benefit costs when preparing billings for reimbursements by the United States. Preparation of proper billings is easier for the State in which the governmental employment was performed and which assumes the benefit costs. Therefore, on Combined-Wage claims, where the employment was in a transferring State, it is simpler for the paying State to charge the transferring State for its share of the costs of Extended Benefits, and for the transferring State to prepare the billings for any reimbursements due from the United States.

Previously, it had been determined that it was simpler for the paying State to bill the United States for all reimbursements due on Combined-Wage Claims, and a change to accomplish this was included in the 1978 amendments to the Extended Benefits regulations, at 20 CFR 615.14(c) (43 FR 13818, March 31, 1978). By the express provision in § 616.8 (f) that is included in this document, this position is reversed and transferring States will be charged for their full shares of the costs of Extended Benefits and will bill the United States for any reimbursements due. By agreement with the States this change was put into effect with respect to benefits paid after December 31, 1978. A conforming change will be made in Part 615, and included in the amendments to Part 615 that are being prepared for publication.

3. Section 6 of the Emergency Jobs Programs Extension Act of 1976 (Pub. L. 94-444), added Part B of Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567). This new Part B provides for Federal reimbursement to States for the cost of unemployment benefits paid to individuals on the basis of public service employment and wages funded under the Comprehensive Employment and Training Act. Changes to § 616.8(f) in this document that are prompted by the amendment in Pub. L. 94-444 also pertain to whether the United States shall be billed for benefit costs by paying States or transferring States. Under the present regulation the paying State bills the United States for all benefit costs of the Federal programs of unemployment compensation for federal employees and ex-service members, but the transferring State bills the United States for reimbursements of benefits based upon public service employment and wages. Benefits under these programs are funded from the Federal Unemployment Benefits and Allowances account in the Department of Labor's annual appropriation. It has been determined that it would be simpler for the paying State to bill the United States

for all Federal benefits and reimbursements funded from the Federal Unemployment Benefits and Allowances account, including reimbursements of benefits based upon public service employment and wages. That change is made in this document.

Other amendments to Part 616 delete paragraph (b)(3) of § 616.9 (relating to employment and wages not transferable) as obsolete, because by its own terms it did not apply after June 30, 1973; and change the equation for computing charges to transferring States so as to carry the computation to at least three decimal places.

The purpose of the latter change is to make the charges to participating States more equitable. The rational underlying this change is that the more the charges are refined, the greater will be the equity in the charges assessed against all participating States whose wages were used to pay benefits to a Combined-Wage Claimant.

All of the amendments in this document pertain to the methods of handling Combined-Wage Claims, as between paying States and transferring States, and the billings of the United States. None of these amendments has any effect on the substantive rights of individuals in regard to Combined-Wage Claims.

These amendments to Part 616 have been developed in consultation with the duly designated representatives of the Interstate Conference of Employment Security Agencies, who, pursuant to § 616.2 of Part 616, are recognized by the Secretary of Labor as agents of the State unemployment compensation agencies for the purposes of the consultation required by section 3304(a)(9)(B) of the Internal Revenue Code of 1954. Most of the amendments in this document were proposed by representatives of the Interstate Conference of Employment Security Agencies, pursuant to § 616.11 of Part 616.

Specific Amendments in this Document

1. A new paragraph (2) is added to § 616.8 (c), which requires paying States to furnish notices to transferring States whenever a redetermination is made which will cause a change in charges for benefits paid because of the exclusion of school wage credits included in the original determination or reinstitution of the school wage credits.

2. Section 616.8, paragraph (f)(2), is amended to reflect any change in the ratio of benefit charges which result from a redetermination made as provided in paragraph (c)(2) of this section, and to provide that the computation of charges to transferring States are to be carried to at least three decimal places.

3. A new paragraph (3) is added to § 616.8(f) for the purpose of identifying the Federal benefits and reimbursements billed to the United States by the paying State, and therefore excluded from charges to transferring States. The present paragraph (f)(3) becomes paragraph (f)(5).

4. A new paragraph (f)(4) is added to § 616.8(f) to state that after December 31, 1978, all transferring States will be charged by the paying State for Extended Benefits in the same manner as for regular benefits.

5. Section 616.9 is amended to delete paragraph (b)(3) because it is obsolete.

Note.—The Department of Labor has determined that this document does not contain a major regulation that requires the preparation of a regulatory analysis, within the meaning of Executive Order 12044 and the Department's guidelines published at 44 FR 5570.

This document was prepared under the direction and control of the Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W. 20213, Telephone: (202) 376-7032.

Accordingly, amendments to Part 616 of Chapter V of Title 20, Code of Federal Regulations, are set forth below:

1. In § 616.8 paragraphs (c) and (f) are amended by numbering the present text of paragraph (c) as paragraph (c)(1), adding a new paragraph (c)(2), revising paragraph (f)(2), renumbering paragraph (f)(3) as paragraph (f)(5) which is being published for the convenience of the user, and adding new paragraphs (f)(3) and (f)(4) as follows:

§ 616.8 Responsibilities of the paying State.

* * * * * *

(c) *Redeterminations.* (1) * * *

(2) When a determination is made, as provided in paragraph (a) of this section, which suspends the use of wages earned in employment with an educational institution during a prescribed period between successive academic years or terms or other periods as prescribed in the law of the paying State in accordance with section 3304(a)(6)(A)(i)–(iv) of the Internal Revenue Code of 1954, the paying State shall furnish each transferring State involved in the combined-Wage Claim an adjusted determination used to recompute each State's proportionate share of any charges that may accumulate for benefits paid during the period of suspended use of school wages. Wages which are suspended shall be retained by the paying State for possible future reinstatement to the Combined-Wage Claim and shall not be returned to the transferring State.

* * * * *

(f) *Statement of benefit charges.*

(1) * * *

(2) Except as provided in paragraphs (c)(2), (f)(3), and (f)(5) of this section, each such charge shall bear the same ratio to the total benefits paid to the Combined-Wage Claimant by the paying State as the claimant's wages transferred by the transferring State bear to the total wages used in such determination. Each such ratio shall be computed as a percentage, to three or more decimal places.

(3) Charges to the transferring State shall not include the costs of any benefits paid which are funded or reimbursed from the Federal Unemployment Benefits and Allowances account in the U.S. Department of Labor appropriation, including:

(i) Benefits paid pursuant to 5 U.S.C. 8501–8525; and

(ii) Benefits which are reimbursable under Part B of Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93–567).

(4) With respect to benefits paid after December 31, 1978, except as provided in paragraphs (f)(3) and (f)(5) of this section, all transferring States will be charged by the paying State for Extended Benefits in the same manner as for regular benefits.

(5) With respect to new claims establishing a benefit year effective on and after July 1, 1977, the United States shall be charged directly by the paying State, in the same manner as is provided in paragraphs (f)(1) and (f)(2) of this section, in regard to Federal civilian service and wages and Federal military service and wages assigned or transferred to the paying State and included in Combined-Wage Claims in accordance with this Part and Parts 609 and 614 of this chapter. With respect to new claims effective before July 1, 1977, prior law shall apply.

§ 616.9 [Amended]

2. In § 616.9 paragraph (b)(3) is hereby deleted.

(26 U.S.C. 3304(a)(9)(B); Secretary's Order No. 4-75, (40 FR 18515))

Signed at Washington, D.C., on July 8, 1980.

Ernest G. Green,

Assistant Secretary for Labor, Employment and Training.

[FR Doc. 80-20730 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-30-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Office of the Secretary—

39504 6-11-80 / Procurement; miscellaneous amendments

List of Public Laws

Last Listing July 8, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 7542 / Pub. L. 96-304 Supplemental Appropriations and Rescission Act, 1980. (July 8, 1980; 94 Stat. 857) Price $3.25.

S. 751 / Pub. L. 96-305 Navajo and Hopi Indian Relocation Amendments Act of 1980 (July 8, 1980; 94 Stat. 929) Price $1.

H.R. 7482 / Pub. L. 96-306 To authorize the President of the United States to present on behalf of Congress a specially struck gold-plated medal to the United States Summer Olympic Team of 1980. (July 8, 1980; 94 Stat. 937) Price $1.

S.J. Res. 168 / Pub. L. 96-307 Designating July 18, 1980, as "National POW-MIA Recognition Day". (July 8, 1980; 94 Stat. 938) Price $1.